

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





76-7576

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

\_\_\_\_\_  
No. 76-7576  
\_\_\_\_\_

B

P/S

BENJAMIN F. RAYSON, JR., Plaintiff-Appellant

v.

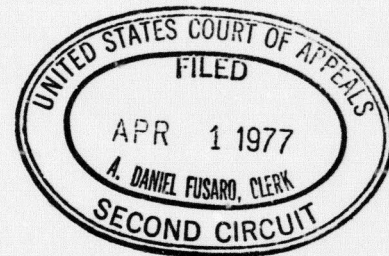
WOLF & CO., CERTIFIED PUBLIC

ACCOUNTANTS: SHELDON AMES: MANAGER,

and SAMI KATAN: SENIOR ACCOUNTANT,

Defendants-Appellees

\_\_\_\_\_  
*and Appendix*  
BRIEF FOR THE PLAINTIFF-APPELLANT  
\_\_\_\_\_



Benjamin F. Rayson, Jr.,  
acting without counsel  
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PAGINATION AS IN ORIGINAL COPY



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## CITATIONS

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## QUESTIONS PRESENTED

1. Is the ninety day statutory limitation jurisdictional for a pro se litigant bringing action under Title VII of the Civil Rights Act of 1964 ?
2. Where the negligence of the Equal Employment Opportunity Commission (hereinafter referred to as EEOC), and the arbitrary and capricious conduct of the State Human Rights Division (hereinafter referred to as the Division) had substantially interfered with Plaintiff's right to due process in procedures below, should the ninety day Right to Sue Period have begun to run upon receipt of the ninety day Right to Sue Letter by Plaintiff ?
3. Was the Court below in error when it found that Plaintiff's evidence, presented to explain his unseasonable filing of action, was insufficient as a matter of fact and of law ?

## STATEMENT OF THE CASE

On April 19, 1974, Benjamin F. Raysor, Plaintiff-Appellant (hereinafter referred to as Plaintiff), filed a verified complaint with the Division charging Wolf & Co., Certified Public Accountants; Sheldon Ames: Manager, and Sami Katan: Senior Accountant, Defendants-Appellees (hereinafter referred to as Defendants) with unlawful discriminatory practices relating to employment, with denying him equal terms, conditions and privileges of employment, and with wrongfully discharging him because of his race and color in violation of the Human Rights Law of the State of New York. (App. 11)

On April 29, 74, an investigatory conference was held at the offices of the Division. (App. 6) Plaintiff did not attend but, instead, sent a telegram requesting a delay to acquire important information. (App. 5) The conference was held without Plaintiff in spite of his requested adjournment, ( App. 6) however, at the conference, the director stated that she would contact Plaintiff to afford

him an opportunity to file any response he might have. (App. 7)

On May 9, 74, Plaintiff visited the offices of the Division, at the Director's invitation, to review the file and make a statement. (App. 8) Notwithstanding prior assurances by the Director that Plaintiff would be permitted an opportunity to contribute to the file, Plaintiff was notified by the Field Representative that he might review the file, but that "he would not be allowed to add or subtract from the documents therein" (App. 8)

On May 17, 74, the Division handed down its determination of no probable cause. (App. 11) This determination was recommended by the Field Representative on May 10. (App. 9) The investigation leading up to this recommendation and determination consisted of an investigatory conference only, during which the Division accepted various unsworn statements from Defendants. (App. 7) Plaintiff, although willing, was not allowed to contribute a single statement in his own behalf to this investigation.

On September 24, 74, Plaintiff delivered a brief, extemporaneous and unrecorded statement before the New York State Human Rights Appeal Board. The Board affirmed the determination of the Division.

On July 31, 75, the EEOC handed down its determination of no reasonable cause, (App. 3) and issued a Notice of Right to Sue to Plaintiff. (App. 4) On explaining the reason for reaching this determination, Arthur Stern, EEOC District Director, states "Having examined the New York State Division of Human Rights' findings and the record presented, I conclude that there is no reasonable cause to believe that the charge is true." (App. 3) There is no mention of an investigation of any kind by the EEOC.

Plaintiff's ninety day Right to Sue Period expired on or about October 29, 75. Plaintiff did not bring action within the ninety day period. Plaintiff



filed a complaint against Defendants on April 23, 76, seeking relief for unlawful discriminatory practices to which he was subjected while in Defendant's employ, in violation of Title VII of the Civil Rights Act of 1964. (App. 13a,b,c,d)

In a motion filed May 14, 76, Defendants moved pursuant to Federal Rules of Civil Procedure 12 (b) (1) and 12 (b) (6) to dismiss Plaintiff's complaint on the grounds that the Court lacked subject matter jurisdiction over Plaintiff's asserted claim, and that the complaint failed to state a claim for which relief could be granted since the complaint was barred by the period of limitations of 42 U.S.C. § 2000e-5. (App. 14a,b,c,d,e,f,g) & (App. 16a to h)

Plaintiff then moved to have the Court waive the period of limitations in 42 U.S.C. § 2000e-5 on the grounds that (1) there are extenuating circumstances (2) failure to file within ninety days after receipt of the Right to Sue Letter is not, perforce, a jurisdictional defect, and (3) granting Plaintiff's motion would best serve the ends of justice. (App. 15a,b,c,d,e,f,g,h,i,j,k,l,m)

On November 3, 76, the Court below delivered its endorsement favorable to Defendants and on November 5, 76, the judgement followed from which this appeal is taken. The Court below found Plaintiff's "excuses insufficient as a matter of fact and of law to toll the running of this period." The Court below also held that the ninety day statutory limitation of Title VII is jurisdictional, and it cited as authority : DeMatteis v Eastman Kodak Co., 511 F.2d 306 (2d Cir. 1975).

Plaintiff appealed to this Court. As yet, in all of the proceedings below, Plaintiff has not been allowed a single hearing on the merits of his case, nor has he had benefit of counsel.



1. THE NINETY DAY STATUTORY LIMITATION IS NOT JURISDICTIONAL FOR A PRO SE LITIGANT BRINGING ACTION UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

The Civil Rights Act of 1964 is a remedial statute i.e. it was designed to afford remedies in various areas to classes of people subjected to discrimination. H.R.Rep. No.914,88 Cong., 1st Sess, 1 (1963) Title VII of this act was the authority under which the EEOC was formed.

The powers of the EEOC were limited to functions of conciliation by the 1964 Act. The reasoning behind this, and the attitude of the legislators toward the problems confronting them is explained in the following quotation.

During the preparation and presentation of Title VII of the Civil Rights Act of 1964, employment discrimination tended to be viewed as a series of isolated and distinguishable events, due, for the most part, to ill will on the part of some identifiable individuals or organization. It was thought that a scheme which stressed conciliation rather than compulsory processes would be more appropriate for the resolution of this essentially "human" problem. Litigation, it was thought, would be necessary only on an occasional basis in the event of determined recalcitrance. Experience, however has shown this to be an oversimplified expectation, incorrect in its conclusions.

H.R. Rep. No. 238,92 Cong., 1st. Sess. 8 (1971)

The Equal Employment Opportunity Act of 1972, i.d.. (Hereinafter referred to as EEOA) was designed to strengthen Title VII of the Civil Rights Act of 1964. Under this amendment, EEOC was given power to issue cease and desist orders against discriminatory practices and to seek enforcement of its orders in the Federal Courts. The "Need For The Bill" is explained i.d. at 3, .

Despite the commitment of Congress to the goal of equal employment of all our citizens, the machinery created by the Civil Rights Act of 1964 is not adequate.

Despite the progress which has been made since the passage of the Civil Rights Act of 1964, discrimination against minorities and women continues. The persistence of discrimination and its detrimental effects requires a reaffirmation of our national policy of equal opportunity in employment. It is essential that seven years after the passage of the Civil Rights Act of 1964, effective enforcement procedures be provided the EEOC to strengthen its efforts to reduce discrimination in employment.



One of the more startling facts uncovered by the legislators of EEOA is: that discrimination in employment is so omnipresent that, frequently, employers do not, themselves, recognize it, or understand its scope, or that it is illegal. 1.d. at 8,

Employment discrimination, as we know today, is a \*\*\* complex and pervasive phenomenon. Experts familiar with the subject generally describe the problem in terms of systems and effects rather than simply intentional wrongs.

\*\*\* It is increasingly obvious that the entire area of employment discrimination is one whose resolution requires not only expert assistance, but also technical perception that a problem exists in the first place, and that the system complained of is unlawful. This kind of expertise normally does not reside in either the personnel or legal arms of employers, and the result in terms of conciliation is often an impasse, with the respondent unwilling or unable to understand the problem in the way the Commission perceives it.

Finally, in the section labelled "PRIVATE ACTIONS", the legislators stress the importance of the private litigant and demonstrate their concern for him by making special provisions for him. 1.d. at 12.

In the case of the Commission, the burgeoning work load, accompanied by insufficient funds and a shortage of staff has, in many instances, forced a party to wait two to three years before final conciliation procedures can be instituted. This situation leads the Committee to believe that the private right of action, both under the present act and in the bill, provides the aggrieved party a means by which he may be able to escape from the administrative quagmire which occasionally surrounds a case caught in an overloaded administrative process. \*\*\*

(w)here the individual has elected to pursue his action in the court, the court may, in such circumstances as it deems just, appoint an attorney for the complainant and authorize the commencement of the action without the payment of fees, costs or security. By including this provision in the bill, the Committee emphasizes that the nature of Title VII actions were often than not pits parties of unequal strength and resources against each other. The Complainant, who is usually a member of a disadvantaged class, is opposed by an employer who not infrequently is one of the nation's major producers and who has at his disposal a vast array of resources and legal talent.

Expressly and succinctly stated, the above quotations mean that Title VII of the Civil Rights Act of 1964, as amended, was specifically enacted to protect minorities and women from the inequities of employment discrimi-

nation, that discrimination in employment is pervasive, that employers do not avail themselves of the expertise to understand that a problem exists and that a law is being broken, and therefore are not amenable to statutory correctional procedures, and that, because of his importance to the efficient working of the statutory scheme, special provisions have been made for the private litigant.

The pro se litigant is a special class of private litigant. The pro se litigant, under Title VII actions, experiences all of the adversity of legally represented private litigants with the additional, and usually insurmountable, difficulty of being forced to represent himself. In order to make his contribution to the statutory scheme, he must instantly assume a legal expertise sufficient to allow him to perform the acts of filing, briefwriting, motion making and whatever else is called for.

The Court below held that the ninety day statutory limitation is jurisdictional, and, as authority, the Court cited DeMatteis v Eastman Kodak Co. 511 F. 2d 306, (2d Cir. 1975). For the Court to so hold is, in effect, to hold that Plaintiff has a binding and absolute obligation to comply with the statutory limitations of Title VII, that failure to do so will prove fatal to his right of action, and that no defense, however credible and substantial, will permit his right of action to survive. It is abundantly clear that the framers of Title VII did not intend to fetter the private litigant, and especially the pro se litigant, in such a fashion, thus precluding his much needed participation in realization of statutory intentions, in a multitude of cases.

This Court has gone on record as espousing the view that remedial statutes should be liberally applied. In Haberman v Finch, 418 F.2d 664, 667, this Court stated "The Social Security Act is a remedial statute to be broadly construed and liberally applied." Another argument for liberal application of remedial



statutes, in general, and Title VII in particular, is the widely accepted liberal approach in other jurisdictions. See Sanchez v Standard Brands Inc., 431 F.2d 455 (5th Cir. 1970), and see Cheate v Caterpillar Tractor Co., 402 F.2d 357, (7th Cir. 1968). For the importance of statutory intent in cases involving violations of statutory limitations, see Burnett v New York Central R. Co., 380 U.S. 424 (1965).

Plaintiff respectfully submits that the ninety day statutory limitation should not be held to be jurisdictional, since, such holding contravenes congressional intent, that DeMatteis does not apply to the case at bar because, in DeMatteis the plaintiff was not a pro se litigant, nor did he raise the issue of deprivation of due process as does Plaintiff in instant case in his succeeding question (infra).

Plaintiff prays that the Court will decide that DeMatteis does not provide authority for making the ninety day statutory limitation of Title VII jurisdictional, or that alternatively DeMatteis does not apply in the instant case.

THE NINETY DAY RIGHT TO SUE PERIOD SHOULD NOT HAVE BEGUN TO RUN UPON RECEIPT OF THE NINETY DAY RIGHT TO SUE LETTER BY PLAINTIFF FROM EEOC SINCE EEOC'S NEGLIGENCE AND THE ARBITRARY AND CAPRICIOUS CONDUCT OF THE DIVISION HAD SUBSTANTIALLY INTERFERRED WITH PLAINTIFF'S RIGHT TO DUE PROCESS IN PROCEDURES BELOW.

Plaintiff charged that Defendants had conspired to wrongfully discharge him, and charged Defendants with unlawful discriminatory practices relating to employment by denying him equal terms, conditions and privileges of employment. (App. 10)

These charges raised questions of fact which required a public hearing.

Executive Law § 297(2), states:

After the filing of any complaint, the division shall promptly serve a copy thereof upon the respondent and all persons it deems to be necessary parties, and make prompt investigation in connection therewith. Within fifteen days after a complaint is filed, the division shall determine whether it has jurisdiction and, if so whether there is probable cause to believe that the person named in the complaint \*\*\* has engaged or is engaging in an unlawful discriminatory practice.

In Maye v Hepeman Lumber and Manufacturing Co., 33 A.D.2d 310, N.Y.S. 2d 691 (1970), where the Division, without benefit of a public hearing, but after holding a conference, decided that there was no probable cause to believe plaintiff's complaint was true. The decision was reversed by the New York State Human Rights Appeal Board, which decision was affirmed by the Fourth Department Appellate Division. The Fourth Dept. held id. at 313, 691,

It is clear that the statute contemplates preliminary investigation, conference and action by the Division, and if the complaint is not dismissed or a conciliation agreement is not reached, the respondents must be given an opportunity to answer and a public hearing must be held \*\*\* For the Division to dismiss his complaint under such circumstances it must appear virtually that as a matter of law the complaint lacks merit. The record, such as it is will not permit such a conclusion. A question of fact is presented requiring a hearing, and the Appeal Board was correct in determining that the action of the Division through its Regional Director was arbitrary and capricious \*\*\*.

Although Plaintiff's case was identical to Plaintiff Maye's, the New York State Human Rights Appeals Board affirmed the Division's order. Plaintiff, who was not able to afford legal representation, and who was not, himself, aware of the injustice done him, was unable to defend himself.

Plaintiff's right to due process was further abused by the negligence of the EEOC. 42 U.S.C. § 2000e-5 (b) states:

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer \*\*\* has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge \*\*\* on such employer \*\*\* within ten days, and shall make an investigation thereof. \*\*\*



If the Commission determines after such investigation that there is no reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by the State or local authorities \*\*\*.

It is eminently clear that the statute intends a preliminary investigation before reaching a determination regarding probable cause. It is also eminently clear that, although the statute advises the Commission to "accord substantial weight to final findings and orders made by State or local authorities.", it could not have intended that the Commission should completely accept, without question, the State findings. If, as per § 2000e-5 (e), complainants must first avail themselves of their State remedies before applying to EEOC, and EEOC accepts, without investigation or question, all State findings, then the function of EEOC becomes purely ministerial.

The EEOC was negligent in that it did not investigate Plaintiff's complaint pursuant to subsection (b) before reaching its determination of no probable cause. EEOC could not have investigated because, if it had, it would have discovered the errors in procedure below as Plaintiff, a layman, did in just one half hour of perusing the State files. In its determination EEOC admits that it did not investigate this matter. As its reason for finding no probable cause, EEOC states (App, 3) "Having examined the New York State Division Of Human Rights' findings and the record presented, I conclude that there is no reasonable cause to believe that the charge is true."

Plaintiff never did have much confidence in State remedies. It is common knowledge that State officials are very lax in pressing discrimination charges. But Plaintiff was extremely confident that in Title VII his government had provided a remedy for him against employment discrimination, and that, if he were right, he would prevail because the government agencies would be sure

to investigate, discover the abuses, and enforce the remedy. Plaintiff waited more than two years under this misguided impression without once having an honest investigation of his complaint or hearing of any kind." Plaintiff relied upon State and Federal organizations designed to aid him, to his detriment. Plaintiff should not be made to suffer for their negligence.

THE COURT BELOW WAS IN ERROR IN FINDING THAT PLAINTIFF'S EVIDENCE,  
PRESENTED TO EXPLAIN HIS UNSEASONABLE FILING OF ACTION WAS INSUFFICIENT  
AS A MATTER OF FACT AND OF LAW

Plaintiff presented the Court below with the best evidence it was within his power to produce; a sworn statement attesting to the extreme adversity and injustice with which Plaintiff had been faced for a two year period (App. 17a to i) leading up to the ninety day Right to Sue Period. The statement was substantiated by documentary evidence of its veracity (App. 17j to al) and was uncontroverted by any other evidence, since Defendants responded by moving to dismiss.

The documents presented included an order from the Family Court of Erie County, granting custody of Plaintiff's young daughter to her grandparents and denying Plaintiff visitation rights, (App. 17 e to q) a letter from Arthur C. Logan Memorial Hospital Dept. of Psychiatry explaining his attendance due to frequent feelings of depression, (App. 17k) a letter from the Veteran's Administration Hospital, showing that I was a patient there during the ninety day Right to Sue Period, (App. 17y) and several letters from the New York State Temporary Commission on Judicial Conduct promising to investigate the conduct of the judge who presided at Plaintiff's custody suit for his young daughter, and a letter from Honorable Chief Judge Breitl answering a letter written to him by Plaintiff regarding his daughter's custody matter. (App. 17s, t, x, & al)

The court decision was introduced to prove to the Court below that Plain-



tiff was severely affected as a result of being deprived of the company of his only child, and from being prevented from even seeing or speaking to her. The reason for this court order completely dissolving the relationship between father and child is not instantly apparent from reading the document because the reason is not given. The reason is not given because it does not exist.

The report of Plaintiff's psychiatric history was introduced to show that Plaintiff was especially sensitive, and prone to feelings of depression, thus increasing his susceptibility to the long period of self pity and mental disability which prevented him from a seasonable filing of this action. The letter also offered more information, if desired.

The letter from the Veteran's Administration Hospital was introduced to show that Plaintiff had substantial physical problems which tended to exacerbate his depression, and also to show that Plaintiff spent nine days in the hospital during the Right to Sue Period.

The letters from the Temporary Commission were introduced to show that Plaintiff was not entirely alone in his feelings that an injustice had been done to him, and that a reputable state agency had dignified his complaint by lending itself to an investigation of the matter. They would not do this unless convinced of the possible truth of Plaintiff's complaint. The letters from the Temporary Commission and Judge Breitel's letter were also introduced to demonstrate that Plaintiff's attention was almost completely absorbed, during the ninety day Right to Sue Period in the matter of his daughter's custody, that Plaintiff was obsessed with this matter, and that he was constantly writing letters petitioning help in the matter.

The Court below did not say that these documents or writings were inadmissible, it said that they were insufficient as a matter of fact and of law. Plaintiff is not prepared to discuss the issue of weight and sufficiency of



evidence, but if the Court below is not ruling the writings submitted by Plaintiff inadmissible, but is instead saying that, as a matter of fact, Plaintiff's illness, his unemployment, and the forced separation from his daughter by judicial decree (a matter which constantly preys upon Plaintiff's mind as representative of the most inhuman injustice imaginable) could not preoccupy Plaintiff to a point of complete distraction, then Plaintiff respectfully submits that the Court has not considered the strength and the depth of parental love, or the need for a parent to maintain himself in a healthy, economically stable position in order to provide for his offsprings, or the horrible feelings of fear and inadequacy that ensue when this need is threatened. If the Court below is saying that, as a matter of law, even if Plaintiff was overcome by circumstances beyond his control, the Court cannot excuse him, then Plaintiff respectfully submits that the Court is not considering the remedial nature, or the congressional intent of Title VII. Additionally, the District Court made no mention of having considered Plaintiff's deprivation of due process caused by administrative errors and negligence in proceedings below.

Plaintiff brought this action seasonably on the local level. He filed seasonably with EEOC. Plaintiff presented himself to each agency along the way. It is clear that Plaintiff firmly intended to follow this action to its successful conclusion. Plaintiff feels that it is his duty as an American citizen, and as a member of the disadvantaged class for whose protection Title VII was enacted, to bring before the courts an account of his experiences in this matter.

Plaintiff prays that this Court will lend itself to an understanding of the issues in the instant case, as it did in Geld v Secretary of Health Education and Welfare, 463 F.2d 38, (2d Cir. 1972) where Plaintiff, who was denied social security benefits, sued the Secretary of Health Education and Welfare in Federal Court on a pro se basis. The District Court found for Defendant and Plaintiff appealed to this Court. This Court stated id. at 43,

We have reviewed the evidence in detail because we are

mindfull that in a case in which the claimant is handicapped by lack of counsel, ill health and inability to speak English well, the courts have a duty to make a searching investigation of the record. (citations omitted) We feel particularly compelled to do so here, as the attitude of the examiner as revealed in the transcript hardly measured up to his statutory duty.

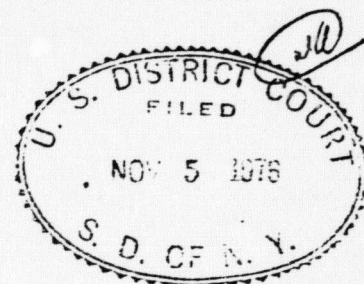
There are substantial similarities between the plaintiff in Gold and the plaintiff in the case at bar. They are each bringing action under a remedial statute, they are each pro se litigants, and they have each been deprived of due process in administrative procedures below this Court. At least one of them has found that elusive justice, which she so relentlessly pursued, and which she so richly deserved.

#### CONCLUSION

The judgement of the District Court should be reversed, and judgement should be entered for Plaintiff allowing him to have a hearing on the merits of his complaint, since , Plaintiff was prevented from seasonable filing due to circumstances beyond his control, and since Plaintiff was deprived of due process by administrative errors and negligence in proceedings below.



*Duffy*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
BENJAMIN F. RAYSOR, JR.

Plaintiff

: 76 Civil 1861 (KTD)

-against-

:  
WOLF & CO., Certified Public  
Accountants, WHELDON AMES, Manager  
and SAMI KATAN, Senior Accountant

Defendants

: JUDGMENT

----- X

Defendants having moved the Court pursuant to Rule 12(b)(1) and (6), of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Kevin Thomas Duffy, United States District Judge, and the Court thereafter on November 3, 1976, having handed down its memorandum endorsement granting the said motion, it is,

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ORDERED, ADJUDGED and DECREED: That defendants WOLF & CO.,  
Certified Public Accountants, WHELDON AMES, Manager and SAMI  
KATAN, Senior Accountant, have judgment against plaintiff  
BENJAMIN F. RAYSOR, JR. , dismissing the complaint.

Dated: New York, N.Y.  
November 5, 1976

Raymond F. Bengtson  
Clerk

Appendix  
(1)



ENDORSEMENT

Raysor v. Wolf & Co., et al. 76 Civ 1861 (KTD)

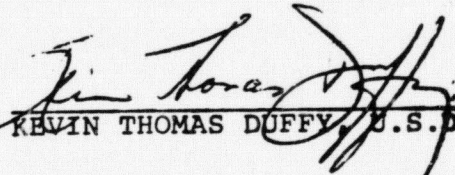
This action was commenced on April 27, 1976 for relief pursuant to Title VII of the Civil Rights Act. Defendants contend that since this action was not brought within 90 days of plaintiff's July 31, 1975 receipt of the Notice of a Right to Sue from the Equal Employment Opportunity Commission, as required by 42 U.S.C. Section 2000e-5, the complaint must be dismissed for lack of subject matter jurisdiction.

Plaintiff does not dispute the running of this period; instead, he offers certain extenuating circumstances in explanation of his delay. I find his excuses insufficient as a matter of fact and of law to toll the running of this period.

Plaintiff additionally asserts that the 90 day statutory limitation is not jurisdictional. It is clear that such assertion is erroneous. See DeMatteis v. Eastman Kodak Co., 511 F.2d 306 (2d Cir. 1975).

Accordingly, defendants' motion to dismiss the complaint is granted.

IT IS SO ORDERED.

  
KEVIN THOMAS DUFFY, U.S.D.J.

New York, New York  
October 27, 1976

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Appendix

(2)

each defendant's attorney, list the attorney's names and addresses under the word "Notice" on bottom left.

If you are paying the \$5 fee, take this to Orders and Appeals, G 66.

If you wish to file as an indigent, ask for and complete the affidavit of indigency form required by the Court of Appeals.

4/26/76 C+D + note  
8-24

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

BENJAMIN F. REYSOR JR.  
Plaintiff

- against -

Wolf & Co., Certified Public  
Accountants, Sheldon Ames, Manager  
and Sami Katan, Senior Accountant  
Defendants

FILED  
U.S. DISTRICT COURT  
SDNY  
NOV 16 3 55 PM

Docket Number:  
76 CIV 1861 (KTD)

Judge:

Kevin T. Duffy

Filed

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Notice is hereby given that BENJAMIN F. REYSOR JR.  
above named, hereby appeals to the United States Court of  
Appeals for the Second Circuit from the ~~decision and order~~  
of U.S.D.C. - S.D.N.Y. ~~ENTERED ON~~ NOV 16, 1976 dismissing ~~his~~

his complaint or ~~petition~~ on OCTOBER 27, 1976  
(date)

Notice To:

Farrel, Fritz Caemmerer  
+ Cheryl P.C.  
Attorneys AT LAW  
Att. of MR ERIC H. HOLTZMAN  
374 Hillside Ave.  
Williston Park, New York 11596

Signed Benjamin F. Reysor Jr.

Address 2200 Madison Ave. Apt 11-C N.Y. 10027

Telephone (212) 283-6076



DATE	NR.	PAGE. 2	PROCEEDINGS
04-23-76	(1)	Filed complaint. Issued. Summons.	
05-07-76	(2)	Filed summons and return- served the following: Wolf & Co.: Certified Public Accountant by A. Appleman on 4-27-76 Wolf & Co.: Certified Public Accountants- UNEXECUTED- 4-27-76 Wolf & Co. by A. Appleman on 4-27-76	
05-17-76	(3)	Filed defts. Wolf & Co. and Sami Katan affdvt. and notice of motion for an order dismissing the complaint pursuant to Rules 12(b) (1) and 12(b) (6) FRCP. Ret. 05-25-76	
05-17-76	(4)	Filed the above mentioned defts' memorandum of law in support of motion to dismiss.	
06-23-76	(5)	Filed Marshals return - served the following: Sheldon Ames, by Naomi Ames on 6-9-76 (Cleveland Heights, Ohio) Sheldon Ames - unexecuted - (Flushing, New York)	
06-24-76	(6)	Filed Pltffs Memorandum of Law in support of a motion to waive the period of limitations in 42 USCA Section 2000e-5.(exhibits attached)	
11-03-76	--	Filed memo endorsed on copy of document # 3-- for the reasons stated. defts' motion to dismiss the complaint is granted. It is so ordered- DUFFY, J. (m/n)	
11-05-76	(7) ✓	Filed Judgment-- that defts. have judgment against plttf. dismissing the complaint. Clerk. (as ordered to 11-03-76) (m/n)	

208-1	76	1861	04	23	76	3	442	1			0860		76	1861
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PLAINTIFFS

RAYSOR, BENJAMIN F. JR.,

DEFENDANTS

DUFFY.J.

WOLF & CO., Certified Public  
Acctountants  
AMES, SHELDON Manager  
KATAN, SAMI Senior Accountant.

J.G.

CAUSE

Equal opportunity for Promotion on the Job.

ATTORNEYS

Benjamin F. Raysor, Jr.,  
2200 Madison Ave. Apt. 11-C  
New York, N.Y. 10037

Appendix (2d)

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID		STATISTICAL CARDS	
	DATE APR 23 1976	RECEIPT NUMBER 6997	C.D. NUMBER	CARD X DATE MAILED
				JS-5
				JS-6 ✓



UNITED STATES DISTRICT COURT  
U.S. COURTHOUSE  
40 Foley Square  
NEW YORK, N.Y. 10007

Raymond F. Burghardt,  
Clerk.

RAYSON v. WOLF & Co 7L civ. 1861  
JUDGE DEFFY

Your notice of appeal in the above named action was filed on  
11/26/76. Under the new practice of expediting civil appeals, the  
appellate scheduling order may provide that the record be transmitted within 20 days  
rather than the usual 40 days.

PLEASE report to the Orders and Appeals Section, Room G66, promptly to index  
and transmit the record so that there will be no delay should the USCA schedule order  
be less than 40 days.

In addition, if there are exhibits deemed necessary to the appeal, a stipulation  
designating these exhibits is to be filed with the Court. In the absence of such a  
stipulation due to disagreement, a designation of exhibits with proof of service  
will suffice (see Appellate Rule 11 and General Rule 20 of this Court).

Raymond F. Burghardt,  
Clerk.

By:

J.P. Fumero  
Eddie Aponte,  
Orders and Appeals Clerk.

Appendix (2e)





APPROXIMATE SIZE OF RECORD

4 briefs

NUMBER OF EXHIBITS

10

HAS TRANSCRIPT BEEN MADE?

YES

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW: Plaintiff seeks relief pursuant to Title VII of 1964 Civil Rights Act for discrimination and wrongful discharge. Plaintiff pleads extenuating circumstances for late filing after receipt of 90 day "Right to Sue Letter" from Equal Employment Opportunity Comm. Defendants contend that the Court lacks subject matter jurisdiction to try the case. The District Court gave judgment for Defendants, and Plaintiff appeals.

## ISSUES PROPOSED TO BE RAISED ON APPEAL:

1. Did the Court below abuse its discretion by determining, without examining all available evidence, that Plaintiff's explanation of his reasons for late filing were "insufficient excuses"? 2. Did the negligent processing of Plaintiff's claim by the Equal Employment Opportunity Comm. in overlooking errors in procedure committed by the State Human Rights Comm. tell the statute before it began to run? 3. Is the ninety day statutory limitation jurisdictional to a pre se litigant, or rather, is a pre se litigant estopped, as a matter of law, from using the defense of extenuating circumstances when he has exceeded the ninety day "Right to Sue" statutory limitation?

I, Attorney for the Appellant, hereby certify that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript (FRAP 10 (b)). (Check one box) not applicable

☐ I have already ordered the transcript to be prepared OR

☒ I will order it to be prepared at the time required by the Staff Counsel in the implementation of the Civil Appeals Management Plan.

COUNSEL'S SIGNATURE

*Dwight A. Rayson Jr.*

FOR APPELLANTS

DATE

*November 28, 1997*

APPROVED BY

ORM D

# UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

## TRANSCRIPT INFORMATION

CIVIL APPEAL

To be completed by counsel for appellant in civil appeal from district court within 15 days after filing notice of appeal.

DISPOSITION OF COPIES: (1) to Clerk of the Court of Appeals; (2) and (3) to Court Reporter; (4) Counsel for Appellant; (5) retained by Counsel for Appellant.

### THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT

<b>CASE TITLE</b> <b>BENJAMIN F. RAYSON, JR.</b> <b>Plaintiff</b>	<b>DISTRICT</b> <b>Southern District of New York</b>	<b>DOCKET NUMBER</b> <b>76 Civil 1861 (KTD)</b>
<b>- against -</b> <b>WOLF &amp; CO. CERTIFIED PUBLIC ACCOUNTANTS; SHELDON AMES, MGR. and SAMI KATAN, SENIOR ACCOUNTANT</b> <b>Defendants</b>	<b>JUDGE</b> <b>Kevin T. Duffy</b>	<b>APPELLANT</b> <b>Benjamin F. Rayson, Jr.</b>
	<b>COURT REPORTER</b>	<b>COUNSEL FOR APPELLANT</b> <b>None</b>

## TRANSCRIPT ORDER

Must be completed.

DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATES)

There is no transcript.

I am ordering a transcript.

I am not ordering a transcript.

Reason:

☐ Daily copy is available.

☐ Other. Attach explanation.

no transcript was made.

METHOD OF PAYMENT ☐ FUNDS ☐ CIA VOUCHER

- ☐ PREPARE TRANSCRIPT OF PRE-TRIAL PROCEEDINGS
- ☐ PREPARE TRANSCRIPT OF TRIAL
- ☐ PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS
- ☐ PREPARE (Other: Specify)

DELIVER TRANSCRIPT TO: NAME, ADDRESS, TELEPHONE



I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript (FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the rates required by the Civil Appeals Management Plan, F.R.A.P. and the local rules.

COUNSEL'S SIGNATURE

*Benjamin H. Raper Jr.*

DATE

*11/28/76*

COURT REPORTER ACKNOWLEDGEMENT

To be completed by court reporter. Return one copy to clerk, U.S. Court of Appeals.

DATE ORDER RECEIVED

ESTIMATED COMPLETION DATE

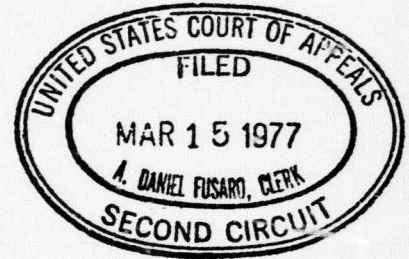
ESTIMATED NUMBER OF PAGES

COURT REPORTER

76-7576

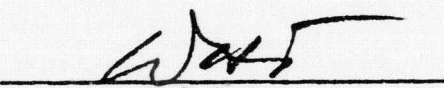
76-7576

Benjamin F. Raysor, Jr. v. Wolf & Co.



It is hereby ordered that Benjamin F. Raysor, Jr., appellant pro se, may have until April 1, 1977 in which to file his briefs and appendices.

Date: 3/15/77

  
U.S.C.J.





EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
NEW YORK DISTRICT OFFICE  
90 CHURCH STREET, ROOM 1301  
NEW YORK, NEW YORK 10007

*Exhibit A*

Charge No. TNY 4-1131

Benjamin F. Raysor  
2200 Madison Avenue, #11C  
New York, New York 10037

Charging Party

Wolf & Company  
One Penn Plaza  
New York, New York

Respondent

DETERMINATION

Under the authority vested in me by Section 29 CFR 1601.19b(d) of the Commission's Procedural Regulations (September 27, 1972), I issue, on behalf of the Commission, the following Determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and the timeliness, deferral, and all other jurisdictional requirements have been met. Substantial weight has been accorded the findings of the New York State Division of Human Rights, which are attached.

Having examined the New York State Division of Human Rights' findings and the record presented, I conclude that there is not reasonable cause to believe that the charge is true.

This determination concludes the Commission's processing of the subject charge. Should the Charging Party wish to pursue this matter further, he may do so by filing a private action in Federal District Court within 90 days of his receipt of this letter and by taking the other procedural steps set out in the enclosed NOTICE OF RIGHT TO SUE.

JUL 31 1975

Date

FOR THE COMMISSION:

*Arthur W. Stern*  
Arthur W. Stern  
District Director

Enclosures: (2) 706 Agency Findings  
Notice of Right to Sue

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

JUL 31 1975

TO: Benjamin F. Raysor  
2200 Madison Avenue, #11C  
New York, New York 10037

FROM:  
Equal Employment Opportunity Comm.  
New York District Office  
90 Church Street Room 1301  
New York, New York 10007

CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING  
REASON:

- ☒ NO REASONABLE CAUSE ☐ UNTIMELY CHARGE  
☐ NO JURISDICTION ☐ FAILURE TO PROCEED

EEOC REPRESENTATIVE

Ralph Munoz, District Counsel

TELEPHONE NUMBER

CASE/CHARGE NUMBER

264-7161

TNY 4-1131

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

*Arthur W. Stern*

District Director

cc:  
Wolf & Company  
One Penn Plaza  
New York, New York

Appendix (4)



Exhibit C

Telegram

NYC 080 (1903) (2-014646E118) PD 04728/74 1903

ICS IPMTZZ CSP

2122836076 TDMT NEW YORK NY 20 04-28 0703P EDT

PMS MURIEL SHAPIRO THE STATE DIVISION OF HUMAN RIGHTS, 9:00 AM, DLR

79 WORTH ST

NEW YORK NY

REGARDING RAYSOR VS WOLFE AND COMPANY REQUESTING MONTH DELAY  
IN HEARING TO OBTAIN VALUABLE INFORMATION. PLEASE EXTEND SAME  
THANK YOU

BENJAMIN F RAYSOR JR

NNNN

RECEIVED

APR 29 1974

REGION 1 a

1a-C-2320-74

BF-1201 (RS-89)

Exhibit B

Appendix (5)

Exhibit B

1

D. Additional Remarks

(Division posters distributed with instructions for proper posting; application for employment form(s) reviewed for compliance; etc.)

GENERAL STATEMENTS

The conference was delayed 40 minutes awaiting the arrival of Mr. Benjamin F. Raysor, the complainant in the case.

By 11:00A.M. when it became apparent Mr. Raysor would not appear, it was decided to begin the conference since the respondents and the attorney for the respondents was present, and Mr. Raysor had neither phoned nor written requesting a delay.

Mrs. Fennell opned the conference by explaining to those present that should Mr. Raysor come in he would be invited into the conference room, and brought up to date regarding any statement made by those present, and he would be given every opportunity to respond.

Mrs. Fennell then introduced herself and the field representative. She then explained the investigation was conducted under article 15 of the Executive Law of the State of New York and briefly explained the procedures of the Division. In addition she also explained the retaliation feature of the law, and pointed out this was an investigatory conference and not a hearing or conciliation. She then explained the finding of probable cause or no probable cause, and the appellate rights of the parties in the complaint.

The aforementioned statements took approximately 15 minutes, about this time, the telegram from Mr. Raysor was delivered.

Although the telegram was dated 4/28/74 it was not delivered to 79 Worth Street until 4/29/74 at approximately 11:35 A.M.

Since the conference had already begun it was decided to continue the conference and contact Mr. Raysor at a latter time to apprise him of what had transpired.

Mrs. Fennell then proceeded to question the respondent regarding the allegations.

Exhibit B



Submitted by Mrs. Mary Lloyd

Date \_\_\_\_\_

Reviewed by \_\_\_\_\_

Date \_\_\_\_\_

cc:

RAI - 1  
11/71

Appendix (6)

" ONIOTX (6)

Allegation # 6 : continued.

In addition, Mr. Ames mentioned a Mr. Ruppert Muir, who started with the firm at \$ 7500 and has increased to \$ 9900. Mr. Muir is doing the same work as Mr. Raysor at this point. In addition to not being able to complete work that was assigned, it was reported that Mr. Raysor was preparing income taxes for the city employees while he was assigned to a job at HRA and charging the employees for same.

Allegation # 7: Denied. Respondents showed the Regional Director and field representative the IBM print out with regards to the employees employed by Wolf and Company. The print out had to be explained for the benefit of Mrs. Fennell and Mrs. Lloyd. It is called Manpower Print Out. At any rate, the Print Out is prepared by the employee Time sheet. It shows that Mr. Raysor's percentages were substantially lower than that of other employees. By percentages we mean percentages of time, productive man hours, hours off for personal time and sick time, vacation time. Percentages of work completed by employee, in every instance, Mr. Raysor was far below the other employees in the same category as Mr. Raysor.

At this point, Mrs. Fennell terminated the conference. She summarized the proceedings and informed those present that a determination and finding averages about 15 days. She then explained the probable cause or no probable cause procedure. She questioned the respondent as to references should Mr. Raysor should require a reference from the respondent company. Mr. Bonagura stated that they would take pains not to give a derogatory reference. They have no intention of giving a negative response to any reference that Mr. Raysor may request of them.

Mrs. Fennell notified respondents that we would contact Mr. Raysor to give him an opportunity to file any additional response he might have. At this time, the conference was adjourned at 1:35 P.M.



STATE OF NEW YORK  
Executive Department  
**DIVISION OF HUMAN RIGHTS**

INTER-OFFICE MEMORANDUM

*Exhibit B*

To: Files

Office Region 1A

From: Mary L. Lloyd, Field Representative

Date May 10, 1974

Subject: Benjamin F. Raysor Vs. Wolf and Company

Case No. 1A - C 2320-74

On Thursday, May 9, 1974, Mr. Benjamin F. Raysor came into the office at 79 Worth Street, New York City to review the file re: the above-entitled matter.

Field Representative explained to Mr. Raysor, it was permitted for him to do so; however he would not be allowed to add or subtract from the documents therein, except he may copy by hand any information he desired.

Mr. Raysor viewed the file and maintained the data submitted by respondents did not relate to his charge of discrimination against Blacks. He further stated he intended to fight the respondents regardless of the finding of this Division.

Mr. Raysor was given every opportunity to support his charge of racial discrimination but was unable to do so.

Complainant was informed of his right to appeal.

Mr. Raysor stated he intended to reapply to the EEO Commission and any other agency he felt would give him an audience. He said he would await the official finding by the Division, he then left the office at approximately 10:45 A.M.

*Mary L. Lloyd*  
Mary L. Lloyd

MLL:co

Appendix (8)

STATE OF NEW YORK

Executive Department

DIVISION OF HUMAN RIGHTS

INTER-OFFICE MEMORANDUM

*Exhibit F*

To: Files

Office Region 1A

From: Mary L. Lloyd, Field Representative

Date May 10, 1974

Subject: Benjamin F. Raysor Vs. Wolf & Company et al

Case No. 1A-CS 2320-74  
Central No. CF 33201-74

Basis for No Probable Cause

The complainant, who is Black, filed a verified complaint charging the respondents with unlawful discriminatory practice relating to employment by denying him equal terms, conditions and privileges of employment, and terminating him because of his race and color.

In his complaint he charged he was harrassed by respondents and terminated due to the racist attitude of the respondents plus the fact his seniority warranted a \$ 1,000. salary increase.

Investigation reveals complainant received consistently low evaluations by numerous supervisors, he had a record of excessive absenteeism and chronic lateness. His work was of a poor quality and except for the very basic and routine type assignments, complainant was unable to perform his assignments in a satisfactory manner.

Investigation further reveals respondents employ a high percentage of minorities, including Blacks, Puerto Ricans, East Indians and Filipinos in the capacity of Accountants, both junior and senior.

In addition the complainant had informed his supervisor, that he had already applied to Beth Israel Hospital for a position and requested a letter of recommendation which respondents consented to give him.

There is no evidence of unlawful discriminatory action on the part of the respondents, and a No Probable Cause finding is recommended.

*Mary L. Lloyd*  
Mary L. Lloyd  
Field Representative

MLL:co



STATE OF NEW YORK : EXECUTIVE DEPARTMENT

STATE DIVISION OF HUMAN RIGHTS  
on the complaint of

Benjamin F. Raysor  
against

Complainant

Wolf & Company; Sheldon Ames, Mgr.  
Sami Katan, Sr. Public Accountant

Respondent

the complainant  
has been informed of right  
to private counsel.

Signature

COMPLAINT NO.

Exhibit J

I, Benjamin F. Raysor

residing at 2200 Madison Avenue NYC 10037

Tel No. 283-6076

charge Wolf & Company; Sheldon Ames, Mgr. & Sami Katan Sr. Public Accountant

whose address is One Penn Plaza, NYC

Tel No. 239-9350

with an unlawful discriminatory practice relating to employment on or about March 17, 1974

by denying me equal terms, conditions and privileges of my employment and termination

because of my AGE ( ), RACE ( X ), CREED ( ), COLOR ( X ), NATIONAL ORIGIN ( ), SEX ( ).

The particulars are:

1. I was employed by the respondent firm December 1, 1971 as an Accountant to audit O.E.O Property Programs and H.S.A. Mental Health Programs. At the time of hiring the respondent Mr. Benagura promised I would be reviewed in six months for an increase in salary. The amount stipulated was an additional \$500.00.
2. I believe my work performance was satisfactory.
3. While in the respondents employ I received no review or raise in salary for two years while other Caucasian colleagues received their review and increments.
4. On or about February 1974 a staff meeting was held during which staff members were requested to air all grievances, make suggestions for improvement. Mr. Ames was a recent newcomer on staff who I approached to arrange a review for me. I was given a \$1000.00 raise per year which amounted to \$12,000 to become effective March 15, 1974.
5. Subsequently, the respondent asked me for my resignation because he had received a verbal complaint from a fiscal officer named Mr. Rodriguez, Director of the Upper Westside Community Corporation. My termination became effective 3/17/74.
6. It is my belief the respondent had conspired to discharge me on charges which have not been clearly defined because of his racist attitude against Blacks.
7. I am Black. Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment by denying me equal terms, conditions and privileges of my employment and termination because of my Race & Color in violation of the New York State Human Rights Law.

By reason of the unlawful discriminatory practice of respondent as herein alleged, complainant has already suffered damages in the sum of \$ UNSPECIFIED

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

STATE OF NEW YORK  
COUNTY OF NEW YORK

} ss:

Notary Public, State of New York  
No. 51655770  
Qualified in New York County  
Commission Expires March 30, 1975  
*Herbert E. Allen*

*Benjamin F. Raysor*  
(Signature of Complainant)

Benjamin F. Raysor, being duly sworn, deposes and says that he is the Complainant herein; that he has the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on information and belief; and that as to those matters he believes the same to be true.

Subscribed and sworn to before me  
this 19th day of April, 1974

*Benjamin F. Raysor*  
(Signature of Complainant)

Appendix (10)



NEW YORK STATE : EXECUTIVE DEPARTMENT  
STATE DIVISION OF HUMAN RIGHTS

BENJAMIN F. RAYSOR

Complainant,

VS.

Case No. Ia-C-2320-74

WOLF & COMPANY; SHELDON AMES,  
MANAGER; AND SAMI KATAN, SENIOR  
PUBLIC ACCOUNTANT

Respondents.

*Exhibit H*

DETERMINATION AFTER INVESTIGATION

On April 19, 1974, Benjamin F. Raysor, who is Black, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment by denying him equal terms, conditions and privileges of employment and terminating him because of his race and color, in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights determined that there is no probable cause to believe that the respondents have engaged in or are engaging in the unlawful discriminatory practice complained of. Complainant was employed by respondent for approximately three years as a Junior Auditor at a salary substantially higher than that paid other Junior Auditors.

Complainant was terminated because his work performance failed to measure up to the standards set for the type of contractural public accounting work in which respondent was engaged.

Respondent has terminated white employees for similar reasons.

Upon the foregoing, the complaint is ordered dismissed and the file is closed.

THE COMPLAINANT OR ANY PARTY TO THE PROCEEDING BEFORE THE DIVISION MAY APPEAL THIS ORDER TO THE STATE HUMAN RIGHTS APPEAL BOARD, 250 BROADWAY, NEW YORK, NEW YORK 10007, BY FILING A NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF THE MAILING OF THIS ORDER.

DATED: May 17, 1974

STATE DIVISION OF HUMAN RIGHTS

By

*Lillian H. Fennell*  
Lillian H. Fennell  
Regional Director

TO: Benjamin F. Raysor  
2200 Madison Avenue  
New York, New York 10037

Wolf & Company  
One Penn Plaza  
New York, New York  
Att: Sheldon Ames, Manager  
Sami Katan, Sr. Public Accountant

Frank A. Fritz, Jr., Esq.  
114 Old Country Road  
Mineola, New York

Appendix (11)



STATE OF NEW YORK: EXECUTIVE DEPARTMENT  
STATE HUMAN RIGHTS APPEAL BOARD

-----  
BENJAMIN F. RAYSOR, COMPLAINANT-APPELLANT

vs

WOLF & COMPANY; SHELDON AMES, MANAGER;  
AND SAMI KATAN, SENIOR PUBLIC ACCOUNTANT

-----  
RESPONDENTS

O R D E R

Case No. CF 33201-74

APPEAL NO. 2216

*Exhibit K*

The above-entitled appeal having come on to be heard before Hon. Emil Levin on the 24th day of September 1974 and Benjamin F. Raysor, Complainant-Appellant having appeared personally and having argued in his own behalf, and Respondents having appeared by Fritz, O'Brien & Farrell, Esqs., Frank A. Fritz, Jr., Esq., of Counsel, who submitted on the record, and the State Division of Human Rights having appeared by Henry Spitz, Esq., General Counsel, Gladys M. Foster, Esq., of Counsel, who submitted on the record, and

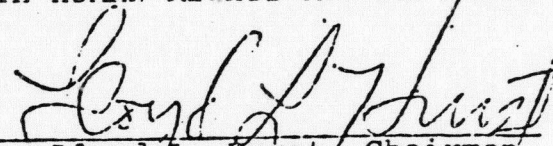
The Board having reviewed the record herein and having considered the argument of the Complainant-Appellant, and having decided that the Determination and Order of the State Division of Human Rights dismissing the verified complaint of Complainant-Appellant was not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, it is

ORDERED that the Determination and Order of the State Division of Human Rights made herein on the 17th day of May 1974 be, and the same is hereby affirmed.

Dated: May 16, 1975  
MAILED: July 7, 1975

STATE HUMAN RIGHTS APPEAL BOARD

By

  
Lloyd L. Hurst, Chairman

TO:

Mr. Benjamin F. Raysor  
2200 Madison Avenue, Apt. 11C  
New York, New York 10037

Wolf & Company  
One Penn Plaza  
New York, New York  
Att: Mr. Sheldon Ames, Manager  
Mr. Sami Katan, Sr.  
Public Accountant

Fritz, O'Brien & Farrell, Esqs.  
Frank A. Fritz, Jr., Esq.  
114 Old Country Road  
Mineola, New York 11501

Commissioner Werner H. Kramarsky  
State Division of Human Rights  
270 Broadway  
New York, New York 10007

Henry Spitz, Esq., General Counsel  
State Division of Human Rights  
270 Broadway  
New York, New York 10007



STATE OF NEW YORK: EXECUTIVE DEPARTMENT  
STATE HUMAN RIGHTS APPEAL BOARD

-----  
BENJAMIN F. RAYSOR, COMPLAINANT-APPELLANT

VS

WOLF & COMPANY; SHELDON AMES, MANAGER;  
AND SAMI KATAN, SENIOR PUBLIC ACCOUNTANT

RESPONDENTS  
-----

D E C I S I O N

Case No. CF-33201-74

APPEAL NO. 2216

This is an appeal by Benjamin F. Raysor, Complainant-Appellant, hereinafter called Appellant, from a Determination and Order after Investigation of the State Division of Human Rights, hereinafter called Division, dated May 17, 1974, dismissing the complaint wherein Appellant had charged the Respondents above-named with an unlawful discriminatory practice relating to employment by denying him equal terms, conditions and privileges and terminating him because of his race and color. Appellant is Black.

In his verified complaint sworn to the 19th day of April 1974, Appellant alleged among other things, that he was employed by Respondent Company on December 1, 1971 as an accountant to audit O.E.O. Poverty and other programs, and at the time of his hire he was promised that he would be reviewed in six months for a salary increase of \$500. Appellant further alleged that his work was satisfactory but he received no review or raise in salary for five years while other Caucasian colleagues received their review and increment; that in or about February 1974 he approached Respondent Ames to arrange a review for him and was given a \$1000.00 per year increase to \$12,000.00 to become effective March 15, 1974. Appellant further alleged that subsequently Respondent asked for his resignation because of a complaint received from the Director of the Upper West Side Community Corporation, and Appellant's termination became effective March 17, 1974. Appellant further alleged that it is his belief that said Respondent had conspired to discharge him on charges not clearly defined because of his racist attitude against Blacks.

After investigation, the Division determined by its order of May 17, 1974, that there was no probable cause to

Appendix (12b)



believe that Respondents had engaged in the unlawful discriminatory practice complained of and dismissed the complaint.

The record indicates that Appellant began his employment with the salary of \$11,000.00 per annum which was considerably more than most of the employees start with. It also appears that Appellant had a high rate of absenteeism and that his work needed supervision. It further appears that the Director of the UpperWest Side Community Corporation had complained to Respondent about Appellant and had stated that he would not permit Appellant to return to their offices, which resulted in another accountant having to be taken off his job to complete the audit originally assigned to Appellant.

Exhibit "4" in the record is a memorandum prepared by Respondent Ames, Manager, concerning the six month period ended March 31, 1974 which describes Appellant's work at several job assignments. With respect to Appellant's salary increase in or about March 1, 1974 from \$11,000.00 to \$12,000 a year, there is a statement which reads as follows:

"He personally told me that he was glad to get the raise to \$12M in order to write it on his resume. He pulled from his pocket a response to his recently sent resume for a job as an administrative asst. at the Beth Israel Hospital. I told him that I and the firm would recommend him for a PRIVATE ACCOUNTING job. And I told him of Firms to contact and people to see regarding such jobs. \* \* \* \* \*

It also appears from the record Exhibit "7" which is a copy of the EEO Report, that as of February 15, '74, there were fifty four employees of whom five were Black, ten Spanish surnamed Americans, and eleven were Oriental. The report as of April 24, 1974 shows that of sixty-three employees, six were Black, ten were Spanish surnamed Americans, and fifteen were Oriental.

This Board is limited by the Human Rights Law in reviewing the Determination and Order of the Division to decide whether or not the said order is arbitrary, capricious or characterized by abuse of discretion. We have concluded that there is reasonable support in the record for the Division's determination that there was no probable cause to believe that Respondents had engaged in



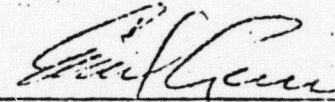
unlawful discrimination against Appellant because of his race and color.

Accordingly, in our opinion, the said Determination and Order of the Division is not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, and should be affirmed.

Dated: May 16, 1975  
MAILED: July 7, 1975

STATE HUMAN RIGHTS APPEAL BOARD

By



Emil Levin, Presiding Member

The following members concur in the foregoing decision and opinion:

HON. LLOYD L. HURST

HON. ALBERT S. PACETTA

HON. IRMA V. SANTAELLA

Appendix (12d)

# JUDGE DUFFY

76 Civ. 1861

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

Benjamin F. Raysor, Jr.

Plaintiff

-V-

COMPLAINT

Wolf & Co: Certified Public Accountants  
Sheldon Ames: Manager  
Sami Katan: Senior Accountant

Defendants

A. The Court's jurisdiction derives from Section 29 CFR 1601.19b(d) of the Commission's Procedural Regulations (September 27, 1972).

B. Defendants did unlawfully discriminate against plaintiff, in violation of Title VII in that they refused to accord him equal opportunity for promotion on the job; in that they conspired to create grounds to discharge him, and in that they did discharge him on contrived and spurious charges. Plaintiff is entitled to relief therefore.

C. Plaintiff seeks whatever relief the Court considers appropriate under the circumstances.

D. This court was selected because; the discriminatory acts occurred in this district, and the defendants and the plaintiff all live and do business in this district.

*Benjamin F. Raysor, Jr.*  
Benjamin F. Raysor, Jr.  
2200 Madison Ave. Apt #11-C  
New York, New York 10037

(212) 283-6076



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Benjamin F. Raysor, Jr.

NAME OF PLAINTIFF or PLAINTIFFS

VS.

CIVIL NO.                     

~~Wolf & Co; Certified Public Accountants~~

~~Sheldon Ames; Manager~~

Sami Katan; Senior Accountant  
NAME OF DEFENDANT or DEFENDANTS

COMPLAINT AND MOTION FOR OTHER RELIEF

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, for employment discrimination. Jurisdiction is specifically conferred on this Court by 42 U.S.C. §2000e-5.

Equitable and other relief are also sought under 42 U.S.C. 2000e-5(g).

2. Plaintiff(s) is a citizen of the United States and resides at 2200 Madison Avenue, Apt. #11-C New York

Street Address

City

New York  
County

New York  
State

(212) 283-6076  
Phone Number

3. Defendant(s) lives at, or its business is located at

One Penn Plaza  
Street Address

New York  
City

New York  
County

New York  
State

4. Please state the address at which you sought employment or were employed by the defendant(s) 370 Lexington Ave., New York City.

Street Address

5. State as nearly as possible when the alleged discriminatory

acts occurred: 18 March 1974

Day

Month

Year

6. State as nearly as possible when you filed charges with the New York State Human Rights Commission regarding Defendant's alleged discriminatory conduct:



7. State as nearly as possible when you filed charges with the Equal Employment Opportunity Commission regarding Defendant's alleged discriminatory conduct: 11 June 1974  
Day Month Year

8. The Equal Employment Opportunity Commission issued the attached Notice of Right to Sue letter which was received by you on 31 July 1975  
Day Month Year

(Note: Please attach Notice of Right to Sue letter to this Complaint.)

9. The acts complained of by you, in this suit, concern:

A.      Failure to employ you.

B.   ✓   Termination of your employment.

C. ☒ Failure to promote you.

D. ☒ Other acts (please specify) Wolf & Co. Discriminates against Amer.

can Negroes. They hire many people of foreign extraction at lower wages than they would have  
to pay American citizens. They do not want American Negroes because their salaries are too  
high. Since December 1971, when I started, they have only had 2 American Negroes; myself and  
Sherwood Calloway, and we were both given \$1,000 raises and fired immediately afterward.

Wolf & Co hired me at \$11,000 per year, on 12/1/71, to comply with federal regulations  
regarding discrimination in hiring. On 12/7/71, they hired Sami Katan, who had much more ex-  
perience than I, at \$9,100 per year, because he was of foreign extraction. Mr. Katan became  
my senior accountant, and when he discovered that I earned more than he, he refused to commu-  
nicate with me in matters relative to our job; making my job performance very difficult.

Mr. Sheldon Ames; Mgr. and Mr. Rodriguez; fiscal officer of Upper West Side Comm. Corp.,  
conspired to create grounds for my dismissal from Wolf & Co. . I audited three programs in of  
wk. at Upper W.Side Comm. Corp. One evening the senior accountant on the job told me to repor  
to the office in the morning. At the office Mr. Ames told me that Mr. Rodriguez had made vari-  
ous charges against me and did not want me back in his place. Neither Mr. Rodriguez nor the  
the senior on the job had told me anything. The charges were false, but I was subsequently  
fired as a result of them.

10. Defendant's conduct is discriminatory with respect to which  
of the following:

A. ☒ Your race.

D. ☐ Your religion

B. ☐ Your color.

E. ☒ Your national origin.

C. ☐ Your sex.

11. Do you believe that the Defendant or Defendants are still  
committing these acts against you? ☒ Yes ☐ No.



12. A copy of the charge to the Equal Employment Opportunity Commission is attached to this complaint and is submitted as a brief statement of the facts of your claim.

13. If relief is not granted, Plaintiff will be irreparably denied rights secured by Title VII of the 1964 Civil Rights Act, as amended.

14. Plaintiff(s) has no adequate remedy at law to redress the wrongs described above.

WHEREFORE, Plaintiff(s) prays (check appropriate letter(s)) as follows:

A. ☐ That all fees, costs or security attendant to this litigation be hereby waived,

B. ☐ That the Court appoint legal counsel.

C. ☒ That the Court grant such relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.

Benjamin J. Laysor Jr.  
SIGNATURE OF PLAINTIFF

Benjamin J. Laysor Jr.  
SIGNATURE OF PLAINTIFF

Appendix (13d)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

BENJAMIN F. RAYSOR, JR.,	:	
Plaintiff,	:	Index No. 76CIV.1861
-against-	:	Judge Duffy
WOLF & CO: CERTIFIED PUBLIC	:	
ACCOUNTANTS: SHELDON AMES: MANAGER	:	
and SAMI KATAN: SENIOR ACCOUNTANT,	:	
Defendants.	:	

- - - - -X

STATEMENT

This is an action wherein the plaintiff seeks relief under Title VII of the Civil Rights Act of 1964 as same relates to employment discrimination. Plaintiff alleges that this Court has jurisdiction of the controversy by virtue of 42 U.S.C. Section 2000e-5 and 29 CFR 1601.9b(d).

Defendants Wolf and Katan now move for an order pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing the complaint on the ground that this Court lacks subject matter jurisdiction over the asserted claim of the plaintiff and that the complaint herein fails to state a claim for which relief can be granted due to the fact that the claim presented in the complaint is barred by the period of limitations provided in 42 U.S.C. Section 2000e5.



### FACTS

The essential facts are set forth in the affidavit of Frank A. Fritz, Jr., sworn to the 14th day of May, 1976, submitted in support of defendants' motion, and are only highlighted herein.

This action was commenced on or about April 27, 1976, by summons dated April 23, 1976, and complaint. The complaint states in Paragraph "8" that the Equal Opportunity Employment Commission advised plaintiff, by Notice of Right to Sue received by the plaintiff on July 31, 1975, that the plaintiff must commence the within action within 90 days of receipt of said notice. Exhibits attached to the supporting affidavit of Frank A. Fritz, Jr., shows that the Notice of Right to Sue was received by plaintiff on July 31, 1975.

Plaintiff's failure to commence this action within 90 days of receipt of the aforementioned Notice of Right to Sue bars him from maintaining this action. It is respectfully submitted that this Court lacks jurisdiction over the subject matter of plaintiff's claim and the complaint herein fails to state a claim for which relief can be granted because of plaintiff's failure to comply with the period of limitations provided in 42 U.S.C. Section 2000e-5.

THE COMPLAINT SHOULD BE DISMISSED  
BECAUSE OF PLAINTIFF'S FAILURE TO  
COMPLY WITH THE PERIOD OF LIMITATIONS  
SET FORTH IN 42 U.S.C. 2000e-5.

The claim asserted by the plaintiff is clearly one which is statutory in origin. The relief requested can not be granted under common law and thus, plaintiff's strict compliance with 42 U.S.C. Section 2000e-5 is a prerequisite to the maintenance of this action. As the Court said in Chambliss v. Coca-Cola Bottling Corp., 274 F Supp 401, 408 (D.C. Tenn. 1967):

"Where legislative enactment creates a new cause of action which did not exist under prior law and fixes the time within which the action may be commenced, the commencing of the action within the time specified is an indispensable condition of the liability in the action created, and, upon the expiration of the time established, both the right and the remedy are destroyed."

See also Sikes v. United States, 8 F.R.D. 34 (D.C. Pa., 1948) wherein the Court held that when a claim is one that does not exist under the common law but is created by statute, the bringing of a suit within the specified time is a condition precedent to the existence of a claim itself, and that the defense of limitations may be raised by a motion to dismiss.

It is not contested when this action was commenced, nor is it contested when the plaintiff received his Notice of Right to Sue from the Equal Employment Opportunity Commission. The only issue before the Court is whether the plaintiff complied with the requirements of the statute.



It is respectfully submitted that the relevant statute herein is 42 U.S.C. Section 2000e-5(f). This statute reads, in relevant part, as follows:

"If a charge is filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or, if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section \* \* \* or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission \* \* \* shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved \* \* \*." (Emph. supp.)

Although this statute is of relatively recent origin, various courts have construed it. From a reading of those cases, it is clear that this action should be dismissed.

One of the earliest cases construing 42 U.S.C. Section 2000e-5 is Miles v. E.I. Dupont de Nemours & Company, 354 F Supp 650 (E.D. Tex., 1973). There, the plaintiff, like the plaintiff herein, commenced a civil action within thirty-two days after receiving from the Equal Employment Opportunity Commission, notice of his right to bring a civil action against DuPont. The statutory time period was then thirty days. The court held that the complaint, which alleged racial discrimination under Title VII of the Civil Rights Act of 1964, should be dismissed for want of jurisdiction over the subject matter

because the plaintiff did not file his suit within thirty days after receipt of notice of his right to sue.

In Huston v. General Motors Corp., 477 F2d 1003 (8th.Cir., 1973) the court stated that the time limitation imposed by the statute generally bars any civil proceeding which is not timely initiated after the complaining party receives a right to sue letter from the EEOC. See also Stebbins v. Nationwide Mutual Insurance Co., 469 F2d 268 (4th Cir. 1972); Goodman v. City Products Corp., Ben Franklin Div., 425 F2d 702 (6th Cir. 1970). It should be noted that although the court in Huston reversed the dismissal of the complaint by the District Court below on the basis of equitable principles concerning the date from which the statute of limitations runs, no similar equitable considerations are present in the instant case. Since the decision in Huston, not only has the period of limitations been extended from thirty days to ninety days, but it has become clear that the crucial date is the date on which the plaintiff receives the notice from EEOC that the agency will take no further action.

In Tuft v. McDonnell Douglas Corporation, 385 F Supp. 184 (E.D. No. 1974) the court had occasion to construe the present statutory language of 42 U.S.C. Section 2000e-5(f). In the Tuft case, the court granted defendant's motion to dismiss because of the failure of the plaintiff to commence a civil



action within the ninety day period after receipt of notice that conciliation had failed. The Tuft court found the wording of the statute clear and unambiguous, and the time bar to be absolute. See also Harris v. Sherwood Medical Industries, Inc., 386 F. Supp 1149 (D.C. Mo., 1976).

To the same effect as the above cited cases is Whitfield v. Certain-Teed Products Corp., 389 F. Supp. 274 (D.C. Mo. 1974) wherein the court granted the defendant's motion to dismiss stating:

"It is manifest from the very language of the statute that a jurisdictional precondition to maintaining a private Title VII suit is that it be commenced within ninety days after the aggrieved party receives required notification."

Recently the Court of Appeals for this Circuit held in De Matteis v. Eastman Kodak Company, 511 F2d 306 (2d Circuit, 1975) that the commencement of the action within the applicable ninety day statutory limitation is jurisdictional. Failure to comply is fatal.

The case now before the court is a clear one. The Notice of Right to Sue letter referred to in plaintiff's complaint (a copy of which is annexed to the affidavit in support of this motion) is clear. Plaintiff knew, or should have known, that he had but ninety days from receipt of that notice to commence this action.

It should be further noted that the instant case is not one where the plaintiff has only briefly delayed in commencing his action. Nearly nine full months have elapsed since the plaintiff's receipt of EEOC's determination. There is no excuse for him not commencing this action within the statutory time period.

#### CONCLUSION

Defendants' motion to dismiss the complaint should be granted.

Respectfully submitted,

FARRELL, FRITZ, PRATT, CAEMMERER  
& CLEARY, P.C.  
Attorneys for Defendants WOLF and  
COMPANY, sued herein as "Wolf & Co.:  
Certified Public Accountants" and SAMI  
KATAN, sued herein as "Sami Katan:  
Senior Accountant."  
Office and P.O. Address  
374 Hillside Avenue  
Williston Park, N.Y. 11596  
(516) 741-1111

Of Counsel:

Eric H. Holtzman



BENJAMIN F. RAYSOR, JR.,

- against -

Defendants.

[illegible]

Judge Duffy

## Appendix (15a)

the period of limitations of 42 USCA Section 2000e-5.

Plaintiff now moves to have this court waive the period of limitations in 42 USCA Section 2000e-5 on the grounds that (1) there are extenuating circumstances (2) failure to file within ninety days after receipt of the Right to Sue Letter is not perforce, a jurisdictional defect, and (3) granting plaintiff's motion would best serve the ends of justice.

#### FACTS

##### A. Extenuating Circumstances:

The extenuating circumstances which precluded plaintiff's seasonable filing of his complaint, are explained in the included, notarized statement entitled "Motion to Excuse for Failure to File Within Ninety Days", which is submitted in support of plaintiff's motion. The statement is a two year chronology of events ending approximately December 12, 1975. Plaintiff spent the period between December 12, 1975, and April 23, 1976, date of plaintiff's de novo application to this court, composing the appended chronology and acquiring supporting documentation.

##### B. Failure to file within ninety days after receipt of Right to Sue Letter:

Plaintiff received his Right to Sue Letter July 31, 1975. Plaintiff was not aware that the letter which he had



received was a Right to Sue Notice, and he filed it away in a dresser drawer, for reasons which are explained in the attached affidavit.

On or about December 12, 1975, plaintiff telephoned the Equal Employment Opportunity Council, hereinafter referred to as EEOC to ascertain the status of his complaint. Upon being advised that his ninety day Right to Sue period had already expired, plaintiff took steps to initiate his de novo action in this court. Although plaintiff was no longer receiving disability payments, and he was again receiving unemployment payments which certifies that he was able and willing to work, plaintiff was still substantially troubled by the physical and mental problems which had afflicted him in the recent past. Plaintiff petitioned various agencies for legal help in this matter, including the Legal Aid Society and The National Association for the Advancement of Colored People, but nowhere could he find assistance. Finally plaintiff was forced to adopt his present pro se position to make his application for relief.

C. Interests of Justice:

The EEOC upheld the "No Probable Cause" finding of the New York State Human Rights Division, hereinafter referred to as the Division. In its determination the EEOC accorded substantial weight to the findings of the Division (Exhibit A, PAR.2).

On April 24, 1974 an investigatory conference was held by the Division (Exhibit B, Par. 4). Plaintiff was not present at the conference, but defendants were. Plaintiff sent a telegram requesting an adjournment, but was denied (Exhibit C, Exhibit B, Par. 5, 6 & 7).

At the conclusion of the conference, the Director stated that she would contact plaintiff in order to give him an opportunity to file any response he might have (Exhibit E, Par. 4). On May 9, 1974, plaintiff visited the Division, but was prevented from making a statement for the file, by the Field Representative (Exhibit B, Par. 1 & 2).

As a result of the investigatory conference, a no probable cause finding was recommended by the Field Representative (Exhibit F) and a subsequent determination to that effect was handed down by the Director (Exhibit H).

On September 24, 1974, plaintiff appeared before the New York State Human Rights Appeal Board (Exhibit K), hereinafter referred to as the Board. The Board affirmed the finding of the Division, and subsequently the EEOC concurred in this affirmation. Plaintiff has never had benefit of counsel throughout these proceedings.

#### ARGUMENT

- (A) Extenuating circumstances are grounds for waiving the ninety day limitation period.

The attached affidavit vividly demonstrates that



plaintiff was prey to a compelling and unique chain of circumstances which would, in fact, provide a basis for excuse for plaintiff's untimely filing even if plaintiff, in his pro se position, were a knowledgeable, competent member of the bar, fully cognizant of statutory requirements. However, the fact of plaintiff's complete ignorance of the law coupled with his travail, makes any assumption that plaintiff could have complied with statutory requirements unreasonable.

In a case similar in many respects to the case at bar, *Shiva Sharma: Plaintiff v. Opportunities Industrialization Center of Greater Milwaukee: Defendant*, 342 F. Supp. 209, the Court held that "Plaintiff bringing suit for wrongful discharge under statute relating to equal rights under law pleaded reasonable excuse for failure to file timely complaint with the EEOC in view of allegations that plaintiff was a non lawyer, a native of India and permanent resident alien who was unaware of the statutory procedures by which he could obtain relief, and that he had filed a charge of discrimination with state agency. Defendant's motion to dismiss denied."

While it is true that the period of limitation in the case cited above is not the same ninety day Right to Sue Period at issue in the case at bar, the point of law is clearly pertinent; an aggrieved party may be excused for failure to comply with statutory requirements when he is

prevented by circumstances over which he could not reasonably have been expected to prevail.

While the courts have frequently insisted on a rigid compliance with the ninety day statutory requirement it should be noted that in such cases the plaintiff did not raise the defense of extenuating circumstances. Furthermore, it can be said without fear of successful contradiction that no plaintiff considered to be the victim of extenuating circumstances has ever been denied, by any court, in these matters.

In *McQueen v. E.M.C. Plastic Co.*, 302 F. Supp. 881, where the court appointed attorney for the plaintiff had been distressed regarding his terminally ill cancerous wife and had failed to meet the thirty day right to sue limitation, and the judge who had appointed plaintiff's attorney had died, the Court overruled the defendant's motion to dismiss. The Court holding that under the circumstances shown the Court considered the application to be sufficient compliance with the thirty day filing period. See also *Antopulos v. Aerojet Gen. Corp.* 295 F.Supp. 1390 (1968).

It is clear that generally the courts have considered themselves free to exercise their discretion in such matters, and the exercise of discretion is, after all, the purpose for which courts were created.



(B) The Court may, in its discretion, determine that failure to file within the ninety day Right to Sue period is not a jurisdictional defect.

Defendants have moved to dismiss this complaint on grounds that this court does not have subject matter jurisdiction et-cetera. In the past certain courts have passed favorably on such motions, but generally the courts recognize such motions as specious ploys or stratagems designed to preclude the argument of the merits of cases.

In *Cook & Nichol Inc. v. Plumsoll Club*, 451 F.2d 505 (1971), the Fifth Circuit Court of Appeals stated, "A motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would not be entitled to recover under any state of facts which could be proved in support of his claim." In the case at bar, plaintiff's claim that defendants illegally conspired to wrongfully discharge him, and committed unlawful discriminatory acts by denying him equal terms, conditions and privileges of employment (Exhibit J, Par. 6 & 7) would if substantiated be adequate grounds for relief under Title VII of the Civil Rights Act of 1964.

Nor is there just one isolated case of judicial opposition to having the courthouse door slammed in the face of an aggrieved party solely on the grounds of procedural technicality. There are many noteworthy decisions, especially in the area of Title VII complaints, where the Court has

opposed a rigid interpretation of procedural technicalities in order to facilitate the statutory goal.

In *Sanchez v. Standard Brands Inc.*, 431 F2nd 455 (1970) the U.S. Fifth Circuit Court of Appeals stated:

"The basic purposes of this act however, are clearly discernable. Mindful of the remedial and humanitarian underpinnings of Title VII and of the crucial role played by the private litigant in the statutory scheme, courts construing Title VII have been extremely reluctant to allow procedural technicalities to bar claims brought under the act. Consequently, courts confronted with procedural ambiguities in the statutory framework have, with virtual unanimity resolved them in favor of the complaining party."

In *Burns v. Thiokol Chemical Corp.* 483 F2nd 300 (1973), the Fifth Circuit Court held that lower Court should not have barred plaintiff access to discoverable information, and reversed and remanded their decision, which was unfavorable to plaintiff, stating:

[4] "And this is especially true in Title VII cases where courts have refused to allow procedural technicalities to impede the full vindication of guaranteed rights."

Again in *Miller v. International Paper Co.* 408 F2nd 283, the Fifth Circuit Court stated:



"The means devised cannot be more important than the end envisioned. We do not believe that the procedures of Title VII were intended to serve as a stumbling block to the accomplishment of the statutory objective."

In *Shaffield v. Northrop Worldwide Aircraft Services Inc.* 373 F. Supp. 937 (1974), the Court stated:

"Our polestar in the analysis should be this fundamental principle of Title VII, that procedural niceties should not be used to impede a claimant in his quest for a hearing on the merits of his case."

See also *Beverly v. Lone Star Const. Corp.* 437 F. Supp. 1136 (1971), and *Hayes V. Seaboard Coast Line Railroad Co.* 46 FRD 49 (1969).

The general tenor of the cases cited above, and many others, clearly indicate that the courts are opposed to any interference with statutory aims.

(C) Where the interests of justice will be served, the court may waive the ninety day limit.

It is in the interests of justice that the court grant plaintiff opportunity for de novo application for relief which was blocked by errors in prior administrative proceedings.

USCA 42 Section 2000e-5(b) states "In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by state or local authorities." However, the language of Section 2000e-5(b) cannot be construed as an instruction to the EEOC to accord carte blanche endorsement to the Division's findings



as was obviously done in the case at bar.

The EEOC should not have acquiesced in the findings of the Division, nor should the Board have decided that the action of the Division in dismissing plaintiff's verified complaint (Exhibit F) was "Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion", when, in fact, it was.

Plaintiff's complaint (Exhibit J, Par. 6 & 7) that defendants had conspired to wrongfully discharge him et-cetera, raised questions of fact which required a hearing. Yet, the division did not hold a hearing. Without a formal hearing wherein sworn testimony is presented, and witnesses are subject to the penalties of perjury, respondents are free to fabricate gross distortions of fact to suit their advantage. Here the testimony was not only unsworn but it was also uncontested, since plaintiff's telegraphed request for adjournment was denied and plaintiff was prevented, by the Field Representative, from contributing to the record at a later date, the Director's statement that he would be so allowed, notwithstanding.

In Mayo v. Hopeman Lumber and Manufacturing Co.  
2 EPD page 10.186, 33AD2d 310, <sup>(1970)</sup> the New York State Fourth Dept. Appellate Division determined that the New York Human Rights Appeals Board properly determined that the New York Division of Human Rights, through its Regional Director, had acted in an arbitrary and capricious manner by finding that



there was no probable cause to believe that employer had engaged in unlawful, discriminatory practices, and by dismissing complaint. Since there had been no hearing, and complainant had not been given opportunity to present his case in formal manner. Division could not have properly dismissed complaint unless it appeared that complaint lacked merit. Record did not permit conclusion that complaint lacked merit because question of fact was presented that required hearing. The Court further stated:

"The test as to whether the action of the Division was arbitrary and capricious (Executive Law, Section 2-200 subd 7, par. e) related to a determination by the Division prior to a hearing, as was made in this case." "For the Division to dismiss the complaint without a hearing it must appear virtually as a matter of law that the complaint lacks merit."

Additionally both the Director and the Field Representative have drawn unfounded and unsubstantiated inferences, disparaging to plaintiff, regarding plaintiff's complaint and the condition of plaintiff's employment with defendants in complete disregard of the provisions of the Civil Rights Act of 1964, Section 701, 706, 42 USCA Section 2000e, 2000e-5, which states "In all actions, and particularly actions filed pro se, of the type seeking relief under Equal Employment Opportunity Act all inferences which can fairly be drawn from complaint, should be drawn in favor

of plaintiff.

In spite of this directive, the Field Representative, in her "Basis for No Probable Cause" stated that the plaintiff complained that his seniority warranted a one thousand dollar raise (Exhibit F, Par. 2). This is a gross misconstruction of fact and is clearly intended to damage plaintiff's standing in the proceedings. Plaintiff, in fact, complained (Exhibit J, Par. 3 & 4) that he had received no review or raise in salary for two years while other Caucasian colleagues had, and that after approaching Sheldon Ames; Manager, a review was arranged and he was given a raise of one thousand dollars per annum.

In her determination of May 17, 1974 the Division Director stated (Exhibit H, Par. 2):

"Complainant was employed by respondents for approximately three years as a Junior Auditor."

Plaintiff was not a junior auditor during the total period of his employment. Plaintiff has performed many unaided and unsupervised audits for defendants. At a point during his employment, defendants instructed plaintiff to identify himself on his audit work papers as semi senior accountant, which plaintiff did for the remainder of his employment. At the time of this notice, plaintiff received no concomitant increase in remuneration.

#### Conclusion:

The Court should grant plaintiff an opportunity to have the merits of his complaint heard, and additionally, the Court should utilize any means at its disposal to



initiate an investigation of plaintiff's charges, since proper investigation was barred in prior procedures.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

BENJAMIN F. RAYSOR, JR., :

Plaintiff, :

NOTICE OF MOTION

-against- :

Index #76CIV.1861  
Judge Duffy

WOLF & CO.: CERTIFIED PUBLIC :

ACCOUNTANTS; WHELDON AMES: MANAGER :

and SAMI KATAN: SENIOR ACCOUNTANT, :

Defendants. :

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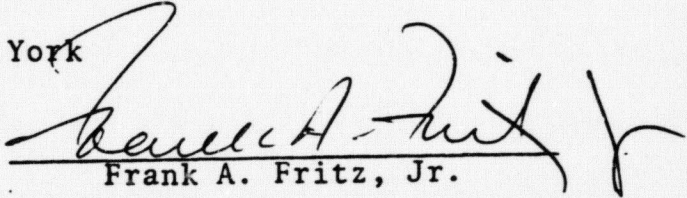
S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of Frank A. Fritz, Jr., sworn to the 14th day of May, 1976, and the exhibits annexed thereto, the undersigned will move this Court before the Hon. Kevin Thomas Duffy at Room 906, United States District Court House, Foley Square, Borough of Manhattan, City, County and State of New York on May 25, 1976 at 2:15 P.M. or as soon thereafter as counsel can be heard for an order dismissing the complaint herein pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and for such further and different relief as to this Court seems just and proper on the grounds that this Court lacks subject matter jurisdiction over the asserted claim and that the complaint



herein fails to state a claim for which relief can be granted because it is barred by the period of limitations provided in 42 U.S.C. Section 2000e-5.

Dated: Williston Park, New York  
May 14, 1976.

  
Frank A. Fritz, Jr.

Yours, etc.,

FARRELL, FRITZ, PRATT, CAEMMERER  
& CLEARY, P.C.  
Attorneys for Defendants WOLF AND  
COMPANY, sued herein as "Wolf & Co.:  
Certified Public Accountants" and  
SAMI KATAN, sued herein as "Sami  
Katan: Senior Accountant."  
Office and P.O. Address  
374 Hillside Avenue  
Williston Park, N.Y. 11596  
(516) 741-1111

TO:

BENJAMIN F. RAYSOR, JR.  
Plaintiff ProSe  
2200 Madison Avenue, Apt. 11-C  
New York, New York 10037

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

BENJAMIN F. RAYSOR, JR.,

:

Defendant,

:

-against-

:

AFFIDAVIT IN SUPPORT  
OF MOTION TO DISMISS

Index No. 76CIV 1861  
Judge Duffy

WOLF & CO.: CERTIFIED PUBLIC  
ACCOUNTANTS: SHELDON AMES: MANAGER  
and SAMI KATAN: SENIOR ACCOUNTANT,

:

:

Defendants.

:

- - - - -X

STATE OF NEW YORK     )  
                          ) ss.:  
COUNTY OF NASSAU     )

FRANK A. FRITZ, JR., being duly sworn deposes and says  
that:

1. I am a member of the firm of Farrell, Fritz, Pratt,  
Caemmerer & Cleary, P.C., attorneys for the defendants Wolf  
and Company ("Wolf") and Sami Katan. I make this affidavit  
in support of the above-named defendants' application for an  
order dismissing the complaint herein pursuant to Rules 12(b)(1)  
and 12 (b)(6) of the Federal Rules of Civil Procedure, and for  
such other, further, and different relief as to this Court  
seems just and proper, on the grounds that this Court lacks  
jurisdiction over the subject matter of the claim asserted  
in the complaint because the claim is barred by the period  
of limitations provided in 42 U.S.C. Section 2000e-5.



2. Defendants Wolf and Katan were served with a summons and two complaints, one of which appears to be a form complaint secured by the plaintiff from the Equal Employment Opportunity Commission. Copies of the summons and complaints are annexed hereto as Exhibit "1".

3. Paragraph "A" of one of the complaints states that the Court derives its jurisdiction from Section 29 CFR 1601.19b(d). Paragraph "1" of the second complaint states that the jurisdiction is conferred on this Court by 42 U.S.C. Section 2000e-5.

4. Paragraph "8" of the second complaint reads as follows: "The Equal Employment Opportunity Commission issued the attached Notice of Right to Sue letter which was received by you on 31, July, 1975." The Notice of Right to Sue letter is not annexed to the complaint.

5. 42 U.S.C. Section 2000e-5(f) states:

"If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or within one hundred eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision shall so notify the person aggrieved and

within 90 days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice." (Emph. supp.)

6. The summons herein is dated April 23, 1976 and was served with the complaint on or about April 27, 1976, long after the 90 day period specified in the above quoted statute.

7. As disclosed by defendants' memorandum of law submitted herewith, an action such as this may not be brought beyond 90 days after the giving of notice by the Equal Employment Opportunity Commission that a civil action may be commenced. The 90 day period of time long expired prior to institution of this action and, therefore, this Court lacks jurisdiction and should dismiss the complaint on that ground and, additionally, on the ground that the complaint fails to state a claim for which relief may be granted.

8. It should be noted that there have been numerous administrative proceedings prior to the institution of this lawsuit. At each level, the investigating agencies found that there was no basis for plaintiff's complaint. On April 19, 1974, plaintiff filed a verified complaint with the New York State Division of Human Rights charging defendants with



unlawful racially discriminatory practices relating to employment. By determination dated May 17, 1974, the New York State Division of Human Rights, after a full investigation, dismissed this complaint; a copy of its determination is annexed hereto as Exhibit "2".

9. Thereafter, on September 24, 1974, an appeal from that determination was heard by the State Human Rights Appeal Board. By decision dated May 16, 1975, the determination was affirmed. Copies of the Appeal Board's decision and order are annexed hereto as Exhibits "3" and "4".

10. On or about August 16, 1974, plaintiff filed a charge against the defendants with the Equal Employment Opportunity Commission. Defendant Wolf was apprised of this charge by the Commission by the sending of a Notice of Charge of Employment Discrimination, a copy of which is annexed hereto as Exhibit "5". Thereafter and on or about July 31, 1975, the Equal Employment Opportunity Commission determined that there was no reasonable cause to believe that the plaintiff's charge was true.

11. Copies of the aforementioned determination by the Equal Employment Opportunity Commission and of the Commission's Notice of Right to Sue were mailed to the plaintiff on July 31, 1975. Copies of said determination and Notice of Right to Sue are annexed hereto as Exhibits "6" and "7".

12. On or about May 4, 1976, my associate, Eric H. Holtzman, spoke to Mr. James P. Crown, an employee of the Equal Employment Opportunity Commission in the New York District Office, to ascertain whether the aforementioned determination and Notice of Right to Sue were mailed to plaintiff and whether the Commission had any records verifying receipt of same by the plaintiff.

13. Mr. Crown responded to Mr. Holtzman's inquiry by letter dated May 4, 1976, in which were enclosed certified mail return receipts. These receipts show that the Commission mailed its determination and Notice of Right to Sue to plaintiff and that the same were received by him on July 31, 1975. A copy of the return receipt signed by plaintiff is annexed hereto as Exhibit "8".

15. Paragraph "A" of the complaint states that this Court has jurisdiction over the instant controversy by virtue of Title 29 CFR Section 1601.19b(d). However, that regulation has nothing to do with the subject matter jurisdiction of this Court. It would seem that plaintiff intended to refer to 29 CFR Section 1601.25b which merely restates the jurisdiction of this Court as set forth in the statute above quoted.

16. It is clear from the facts and from the law as set forth in the accompanying memorandum, that the complaint should

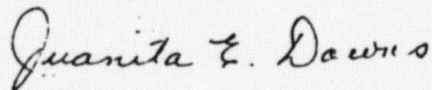


be dismissed because plaintiff failed to commence this action within 90 days after being apprised by the Employment Opportunity Commission, on July 31, 1975, that he had 90 days within which to commence this suit.

17. For the foregoing reasons, it is respectfully submitted that the complaint should be dismissed.

  
Frank A. Fritz, Jr.

Sworn to before me this  
14th day of May, 1976.



JUANITA E. DOWNS  
Notary Public, State of New York  
No. 30-1913110  
Qualified in Nassau County  
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

RAYSOR

-v-

WOLF & CO.

MOTION TO EXCUSE FOR FAILURE TO FILE WITHIN NINETY DAYS

Appendix (17a)



Motion to Excuse for Failure to File Within Ninety Days

Dear Sirs: I plead the following as extenuating circumstances; during the ninety day period in which I was permitted to exercise my right to sue, I suffered severe mental and physical disability, causing me to be unable to function in a social situation and unable to understand the significance and the import of the Right to Sue Notice. My condition was the result of a series of mishaps which occurred prior to and during the ninety day right to sue period. These mishaps occurred, as follows.

On September 11, 1973, my daughter's mother ( Faith Gabbey " Raysor ") died in Buffalo, New York, after an illness of several months. My daughter and her mother had been living by themselves at the time of the mother's death, however, the grandparents, over my objections, took charge of my daughter after the mother's death. They fraudulently obtained letters of guardianship for my daughter's custody ( They falsely represented in court that there were no interested parties other than themselves ). They cut my daughter off from me completely by refusing me visitation privileges and I was forced to seek relief via the courts.

The grandparents ( Arnold and Ruth Gabbey of Buffalo, New York ) not having a valid case were not anxious to have the matter adjudicated. Their entire strategy was to procrastinate so as to gain time in which to estrange my daughter from me. Communication with them was, therefore, very difficult.

My lawyer finally managed to have the matter heard in Supreme Court in Buffalo on March 14, 74 ( After five months ). The grandparents' lawyer was " not prepared ", at the time, but he tried to have the matter dismissed on the grounds that I was not the father, ( I was not married to my daughter's mother ) and that the grandparents had letters of guardianship. Judge Moore determined that the case would have to be heard. He said that I would first have to prove paternity, and if I proved paternity, I could then petition for custody. He said that the Letters of Guardianship had " No effect in the eyes of the court " because they were ex parte. After hearing Judge Moore refuse to dismiss the case, attorney John Drury ( The grandparents' lawyer ) insisted that the matter be transferred to the Family Court. My law-

Appendix (17b)



yer had no objections, so the transfer was made.

Coincidental with the above events, about the early part of February 1974, I was a member of a staff meeting at Wolf & Co. Certified Public Accountants, where I was, then, employed. During this meeting staff members were requested to air all greivances and to make any suggestions they might have for improvements. I mentioned that I had never had a review, during a period of more than two years, and I made several suggestions for improvements. Shortly after this meeting, Mr. Sheldon Ames, a supervisor ( Recently arrived at Wolf & Co. ) arranged a review for me. I was given a raise of \$1,000.00 a year which brought my salary to \$12,000.00 per year, and an " Opportunity to advance as far as my ability would allow." My raise was due to begin as of March 15, 1974.

I was sent to audit the Upper West Side Community Corp. at 501 West 145 Street. I audited three programs at this location over a period of approximately one week. I received two phone calls and I made two during this period ( Each of approximately two minutes duration ). Suddenly, one evening, the senior accountant on the job told me that I had to report to the office the following morning. Upon arriving at the office, Mr. Ames told me that Mr. Rodriguez, the fiscal officer of the West Side Community Corp. did not want me to be sent there anymore. The reason given was that I had constantly tied up their phone, and since they only had one line, I had interferred with their business operations. Neither Mr. Rodriguez, nor the senior on the job had bothered to mention the matter to me. I later found out from, Rolando Valdivieso, another supervisor, that Mr. Rodriguez had also accused me of littering his desk with cigarette butts. I do not smoke; I gave up smoking approximately eight years ago.

After being kept around the office for several days, I was sent to another audit. I had never done this type of audit before, and the senior who had been doing it was leaving the firm and had no time to instruct me. Each time that I called the office to ask Mr. Ames a question his answers were vague and unhelpful, as if he did not know the answers himself. He finally told me to submit whatever I could and he would review it rather than sit down with me and go over it. He said I could then go back and finish it. I did as instructed. I requested and received two days of my upcoming vacation so that I could appear in court in Buf-



role in my daughter's custody suit. When I returned to the office on Monday March 17, Mr. Ames called me into his office, and, after a few preliminary complaints about the audit I had been working on, asked for my resignation. I refused to resign, whereupon, Mr. Ames fired me. I never received a single penny of the raise that had been promised me.

I decided that it was my civic duty to bring charges of discrimination against Mr. Ames, Wolf & Co., and each person involved in the perpetration of the above violation of my civil rights. I began this action knowing that it would cause me difficulty in obtaining future employment, ( I would have an unsatisfactory reference covering the period worked at Wolf & Co) but also knowing that I had been the victim of an unlawful conspiracy. A hearing was scheduled before the New York State Division of Human Rights for Monday April 29. On Sunday April 28, I sent a telegram requesting a month's delay. The telegram ( Copy enclosed ) was ignored, the hearing was held without me, and the complaint was dismissed on the basis of " No probable cause ". I was told that this decision could be appealed, and I immediately submitted an appeal. I also made application to have the matter heard by the Equal Employment Opportunity Commission.

In the meantime, on April 23, the custody hearings had their first session in Family Court Buffalo. Mr. Drury was still " Unprepared to proceed ", and the grandparents and my daughter were not present ( I had not seen my daughter for one year, at the time ). At attorney Drury's request, Judge Trost adjourned the hearing. Judge Trost also refused me temporary custody of my daughter and visitation privileges. I had hoped that the custody litigation would be decided quickly, as soon as my lawyer had gotten the defendants into court, but now, I suddenly realized that the defendants' tactic of procrastination was likely to prolong the matter interminably. I was unemployed, and I knew that what little money I had saved would be quickly used up by legal, living, and travel expenses. Constant brooding over the adversity of my situation built up a frustration within me that seriously affected me. I was forced to seek help at Logan Memorial Hospital Psychiatric Clinic ( I had visited the clinic on prior occasions; see copy of letter of 3/15/76, from Logan Memorial Hosp.).

Appendix (17d)

My frustration increased as the hearings progressed and the judge's bias became all too



clear. My principal source of frustration was Judge Trost's refusal to make a determination on paternity. At our first hearing in Family Court ( April 23, 74 ) Judge Trost concurred with the directives set forth by Honorable James O. Moore of the Supreme Court of Buffalo, New York, upon referring the matter; Judge Trost declared that he would make a determination on paternity first and then try custody. At the third hearing on May 15, after I had produced over \$5,000.00 in cancelled checks made out to my daughter and her mother, and after I had produced letters from the mother proving that I had visited my daughter, and made gifts of clothing, books, and toys, Judge Trost publicly stated that I was the father, but he would not make a determination. Instead, he proceeded into the custody phase of the hearings without determining paternity, thus hopelessly confusing the issues and objectives of the hearings. I am not drawing these facts from memory; I have a transcript of the court record and I know these facts to be certain truths.

After the hearing of May 15, 74, life seemed to become progressively worse for me. On July 1, I was arrested at an American Airlines Terminal in Buffalo for " Criminal trespass " even though I had an airline ticket. I was tried, found guilty, fined \$25.00, and sentenced to fifteen days in the Erie County Penitentiary. I was released under \$100.00 bail, after serving four hours, pending an appeal by my lawyer. My bail was continued until June 23, 75, when the Erie County Court of Appeals reversed the conviction ( See copies of bail receipt #2438 and Judgement of Reversal of Conviction ). On the 21st of July, I lost my mother who had been bedridden since an accident in 1972. My mother was very close to me and I was heart-broken. In September, I approached the Legal Aid Society regarding representation at the appeal of the State Human Rights decision of April 29, 74. Legal Aid told me ( See copy of letter of 9/17/74 ) that they believed that I had been discriminated against, but that they would not accept the case because they did not believe that they could win. On September 24, 74, I appeared before Honorable Emil Levin at the New York State Human Rights Appeal Board and delivered an extemporaneous, unrecorded, ( Which means that Mr. Levin was unable to refer to my argument while making his decision ) and unsuccessful argument. In the meantime, Judge Trost granted a series of adjournments to the respondents in the custody hearings ( Even though



it was a habeas corpus matter ), and while he was prolonging the hearings in this manner, he continued refusing to allow me to see my daughter; on one occasion, during a court recess for lunch, Judge Trost even refused to allow me to take my daughter to lunch. Suddenly, my health began to fail. I had had problems with my prostate and urinary tract for some years, but, all at once, my condition became grave. I got very little sleep nights, ( Nocturia ) my marital situation was disrupted, and my doctors could give me little relief. I had lapses of memory ; I frequently forgot where I had parked my car, and for the first time in my life, I accumulated a group of unpaid parking tickets. I began to worry about being physically capable of supporting my daughter whenever I should obtain custody.

On December 11, 74, after successive adjournments of the custody hearings, at the request of the respondents, I sent a letter to Honorable Charles D. Breitell; Chief Judge of the Court of Appeals, protesting Judge Trost's conduct. I sent copies of the letter to the New York State Temporary Commission on Judicial Conduct, and to the Forth Judicial Dept. in Rochester, New York. All of these sources expressed concern over my predicament, but stated that they could not interfere with pending litigation. However, in the wake of my complaints, Judge Trost did not adjourn the hearing of January 21, 75. He held court and brought the hearings to an end. In his decision of 2/7/75, ( Copy enclosed ) he gave complete custody of my child to her grandparents and denied me visitation.

I was completely distraught over the Judge's decision, and, although I struggled to maintain a calm facade; in spite of all my efforts, my behavior betrayed my true condition. I delivered impassioned dissertations regarding the injustices perpetrated against my daughter and I, to anyone who would listen. I wrote long, angry letters to everyone in authority. I became a monomaniac on the subject of my daughter's custody.

Another distressing consequence of the unfavorable decision was an alarming need for greater cash outlays. My lawyer wanted \$1,500.00 for an appeal of the decision, and the cost of a transcript of the court record of the hearings was \$700.00. I had paid my lawyer \$1000 for representing me during the custody hearings. I also found it necessary to spend more



money for treatment of my prostate condition. Since the doctors at Presbyterian Medical Center, where I had been attending, did not seem to be helping me, I began to visit a urological specialist; Dr. Nicholas Romas, whose fees were higher than the clinic's. Dr. Romas informed me that I had a chronic, non venereal, infection of the prostate which sometimes recurred throughout a patient's life ( See letter of 12/19/75 ). I was terrified at the prospect of a long, perhaps fatal illness. I read a book on the prostate which said that the symptoms of benign prostatic hypertrophy and malignant prostatic hypertrophy are the same. I developed a morbid fear of cancer and impending death, in fact, occasionally, while pondering the futility of my situation, I, indeed, wished that I were dead.

In a letter dated 6/10/75, (Copy enclosed ) Mr. Gerald Stern of the New York State Temporary Commission on Judicial Conduct answered one of the letters I had written protesting Judge Trost's conduct. Along with the letter I had sent a copy of the transcript of the court record. Mr. Stern agreed to investigate the Judge's conduct, and in a letter dated 7/7/75, ( Copy enclosed ) Mr. William Wallace, of the Commission, invited me to confer with them on the matter. I was also in touch with the American Civil Liberties Union, during this period, regarding the same matter ( See letter of 6/11/75, from Miss Bella Greene of the ACLU ).

On July 31, 75, I was terminated as bookkeeper by the Studio Museum in Harlem ( See letter of 7/31/75 ). This was a final crushing blow. All the while that I had been working at the Studio Museum I had been looking for a better paying job, ( I had worked there for 4½ months and I had earned \$193.00 per wk. ) without success, and now that I was unemployed, with no jobs available, I had no hope of raising the balance of my legal fees, or of continuing my much needed medical treatments. That same day, or perhaps the next day; I'm not certain, my mailman delivered to me a registered letter from EEOC ( At the time I did not realize that the letter was from EEOC ). I signed for the letter, opened it, and the first document that I saw was a copy of the State of New York Appeal Notice which affirmed the New York State Division determination of " No probable cause ". I had received a copy of this notice earlier in the month, and, in my disturbed condition, it seemed to me that they had just sent me a duplicate copy. I read only the appeal notice, <sup>Appendix (17c)</sup> closed the envelope and put it into a drawer in my bed-



room. I never imagined that there was, also, a determination from EEOC and a Right to Sue Notice in the letter. I had expected to be given a hearing by EEOC. I had planned to borrow money and hire a lawyer to defend me. I had no idea that EEOC would reach a determination, in my absence, in which "Substantial weight has been accorded the findings of the New York State Division of Human Rights"; a hearing at which I wasn't even represented.

When I was terminated by the Studio Museum in Harlem, for reasons unknown to me, they did not pay me  $4\frac{1}{2}$  days vacation pay (one day per month) that they owed me. I wrote them several letters regarding the matter and they finally told me that they didn't owe me anything (See letter of 9/29/75, from Studio Museum in Harlem). I took my complaint to the Small Claims Court in Manhattan and, I eventually collected the  $4\frac{1}{2}$  days, plus interest and court costs (See Civil Court of the City of New York).

In the meantime, my prostatic condition was becoming increasingly bothersome. I couldn't afford a private doctor, so I went to Veterans Hospital; I could have gone to Veterans Hospital prior to this but I was so emotionally upset that I didn't realize it. At Veterans Hospital, I received a complete examination and a cystoscopy was performed (See letter of 12/19/75, from V.A. Hosp.). The examination revealed that I did not have cancer, but my infection persisted and the hospital could do nothing more than treat it with antibiotics. Upon release from the Hospital, I again visited Dr. Romas who felt that the best treatment for me was a continuation of the antibiotics.

During my conference with the New York State Temporary Commission on Judicial Conduct in July, Mr. Roger Schwarz of the Commission told me that his organization was conducting an investigation of Judge Trost, and that I could reasonably expect some news from the investigation around the middle of September. When I left the Veterans Hospital 9/18/75, I immediately wrote to Mr. Schwarz requesting that he inform me of any developments in his investigation. I learned that Mr. Schwarz was a summer employee of the Commission; a law student at New York State University at Buffalo, who had returned to school for the fall. Mr. Stern answered my letter (See letter dated 9/30/75, from N Y S Tem. Comm.) and said that he would be willing to discuss with me at our mutual convenience. On 10/7/75, Mr. Stern explained to me

Appendix (17h)



that his organization didn't really have the facilities to conduct a full scale investigation in Buffalo, New York. What I could not understand was why Mr. Stern had taken ten months ( since 12/11/74 ) to tell me what he could very easily have told me in ten minutes.

On October 30, I mailed another letter to Chief Judge Charles Breitl protesting the entire incident ( See answer; letter of 11/6/75, from Honorable Charles D. Breitl ).

It was around December 11th or 12th that I finally realized that the EEOC was taking too long to give me a hearing on my discrimination charges. I telephoned the EEOC and spoke to Mr. Munoz; the Commission's lawyer. He informed me that the Right to Sue Notice had been sent to me July 31, 75, and that my ninety day period for filing suit had already expired. It was then that I realized that I had been ill for quite some time. That I had been struggling through life on a day to day basis not fully aware of what was happening around me. It was as though I had been asleep, for a long time, and was just awakening.

I have explained the above facts so as to demonstrate the basis of the tensions which caused my mental and physical disability. Although I am appealing to be excused for failure to file within ninety days because of my mental and physical disability, I respectfully request that my ignorance of the legal procedure involved in this matter be considered a factor. I respectfully submit that I have not had a chance, except for a brief statement at the New York State Appeals Board, to present my argument, and that if I am not allowed to present my argument the entire purpose of the EEOC will be circumvented. If I am successful in this attempt to be allowed to sue my former employer, I would appreciate being allowed a short period of time in which to hire a lawyer. I stand ready to make a personal appearance, if necessary, or to submit all additional evidence I possess in support of the above statement.

Sincerely

*Benjamin F. Rayson, Jr.*  
Benjamin F. Rayson, Jr.

Appendix(17i)

Sworn to before me this 22 day of  
June, 1976 at New York, N.Y.

JACK L. JENNINGS  
Notary Public, State of New York  
No. 24-1966700  
Qualified in Kings County  
Commission Expires March 30, 1977.

*Jack L. Jennings*



Telegram

NYC080(1903)(2-014646E118)PD 04/28/74 1903

ICS IPMTZZ CSP

2122836076 TDMT NEW YORK NY 20 04-28 0703P EDT

PMS MURIEL SHAPIRO THE STATE DIVISION OF HUMAN RIGHTS, 9:00 AM, DLR  
79 WORTH ST

NEW YORK NY

REGARDING RAYSOR VS WOLFE AND COMPANY REQUESTING MONTH DELAY  
IN HEARING TO OBTAIN VALUABLE INFORMATION. PLEASE EXTEND SAME  
THANK YOU

BENJAMIN F RAYSOR JR

NNNN

RECEIVED

APR 29 1974

REGION 1 a

1a-C-2320-74

BF-1201 (RS-89)

Appendix(175)

ARTHUR C. LOGAN MEMORIAL HOSPITAL

Formerly  
KNICKERBOCKER HOSPITAL

70 CONVENT AVENUE • NEW YORK, N. Y. 10027 • 690-7222

DEPARTMENT OF PSYCHIATRY

March 15, 1976


RE: Raysor, Benjamin  
D.O.B.: 7/17/23  
2200 Madison Avenue  
(Apt. 11-C)  
New York, N.Y. 10037

To Whom It May Concern:

The above-captioned Mr. Raysor has been known to this out-patient clinic of the Department of Psychiatry since 4/22/70. He has been followed on the basis of individual therapy, which he has been attending off and on in an effort to help him cope with his interpersonal difficulties and his frequent feelings of depression.

If any additional information is deemed necessary, do not hesitate to contact us promptly. Of course, provided that Mr. Raysor signs a release for such information.

Sincerely yours,

  
Orlando E. Guerrero, A.C.S.W.  
Chief Psychiatric Social Worker

OEG:bw



STATE OF NEW YORK )  
COUNTY OF ERIE ) ss  
TOWN OF CHEEKTOWAGA )

TOWN OF CHEEKTOWAGA

14225 N<sup>o</sup> 2438

Bail Receipt/Appearance Ticket

ARREST NO. A-2877

PERSONAL UNDERTAKING ACCOMPANIED BY A DEPOSIT OF CASH / DIRECTIVE TO APPEAR:

I, Benjamin Rayson, DEFENDANT, residing at 2200 MADISON AV  
NEW YORK - NY, hereby personally undertake and agree that I will appear and  
answer to the complaint of the Offense(s) of TRESPASS

contrary to the provisions of Section(s) 140 Subdv.(s) 65  
of the Penal law(s) at the Town Court in the Town of

Cheektowaga, 3223 Union Road in said town, on the 1 day of JULY, 1979  
at 7<sup>00</sup> O'clock in the AFTER noon, to answer the complaint and to there remain subject to any  
order of the Town Justice, and render myself in execution thereof. If I fail to perform either of these condi-

tions, I will pay to the Town of Cheektowaga \$ 100.00 to secure which payment there has been  
deposited herewith One Hundred Dollars

(Write Out Amount)

Benjamin Rayson (Defendant's Signature) Louise Rayson (Person Posting Bail)

[Signature] Lt. (Witness Signature and Rank) 7/1/79 (Date) 4 45 (Time)

NOTICE TO DEFENDANT: IF YOU FAIL TO APPEAR IN TOWN COURT ON THE DATE AND TIME INDICATED, A  
CRIMINAL SUMMONS OR A WARRANT FOR YOUR ARREST MAY BE ISSUED. IF YOU HAVE POSTED BAIL, THE  
BAIL WILL BECOME FORFEIT UPON YOUR FAILURE TO COMPLY WITH THE DIRECTIONS OF THIS TICKET.

RECEIPT FOR CASH BAIL POSTED BY OTHER THAN DEFENDANT:

N<sup>o</sup> 2438

ARREST NO. A-2877

Louise Rayson (Person Posting Bail), residing at 2200 MADISON AV  
NEW YORK - NY is the owner of the \$ 100.00 cash bail deposited to

ensure the appearance of Benjamin Rayson (Defendant) at Town Court in the Town of

Cheektowaga, 3223 Union Road, on the 1 day of JULY, 1979 at 7<sup>00</sup>  
O'clock in the AFTER noon to answer charges made against him.

Louise Rayson (Signature Person Posting Bail)

[Signature] Lt. (Witness Signature and Rank)

THIS RECEIPT MUST BE PRESENTED TO COURT  
TO CLAIM POSTED BAIL.

● NOTICE: THE BAIL POSTED WILL BECOME  
FORFEIT UPON THE DEFENDANT'S FAILURE TO  
APPEAR IN THE TOWN COURT ON THE DATE  
AND TIME INDICATED.

JUDGMENT OF REVERSAL OF CONVICTION  
ON APPEAL  
FROM COURT OF SPECIAL SESSIONS

At a Term of the COUNTY Court of  
Erie County, held at the County Hall,  
in the City of Buffalo, New York, on  
the 23 day of  
June, 1975.

PRESENT: HON. WILLIAM G. HEFFRON  
*Erie County Judge, Presiding.*

STATE OF NEW YORK  
COUNTY COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK,  
Respondent,

D.A. No. 74-151

— V —

BENJAMIN RAYSON

Appellant (s).





# THE LEGAL AID SOCIETY

SHELDON OLIENSIS  
*President*

HARLEM OFFICE  
290 LENOX AVENUE  
NEW YORK, N. Y. 10027

ORISON S. MARDEN  
*Chairman of the Board*

(212) ENRIGHT 9-1500

JEFFREY E. GLEN  
*Attorney-in-Charge*

IN REPLY REFER TO OLA NUMBER  
HY 4564

September 17, 1974

Mr. Benjamin Raysor  
2200 Madison Avenue  
New York, New York 10037

Dear Mr. Raysor:

I have spoken with Mr. Glen, the head of our office and in addition with our expert on discrimination in employment based upon race.

After a review of the law in this area, we believe that your particular case does not present a viable issue of law.

This is not to say that there was not subtle discrimination by your previous employer, but only that there is not, at this present time, a means by which this type of discrimination can be attacked in the Courts.

I regret that I could not be of greater assistance.

Very truly yours,

THE LEGAL AID SOCIETY

*Esther D. Curtwright*  
ESTHER D. CURTWRIGHT

EDC:jd

## Appendix (17m)

The purpose of the Society is to render legal aid in the City of New York to persons who are without adequate means to employ other counsel.—By-laws of The Legal Aid Society.



STATE OF NEW YORK :  
FAMILY COURT : COUNTY OF ERIE

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BENJAMIN F. RAYSOR, JR.,  
Petitioner

-versus-

Docket No.  
R-41-74

ARNOLD R. GABBEY,  
Respondent

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February 7th, 1975      Decision, TROST, J.

On March 18th, 1974 the Honorable James O. Moore, Justice of Supreme Court, referred this matter. Three principal issues are involved herein, viz:

- (1) the question of whether or not the Petitioner is the natural father of Samantha Frances Raysor;
- (2) the matter of the custody of said child; and
- (3) the question of the legal effect, in these proceedings, of Letters of Guardianship issued to the maternal grandfather on November 19th, 1973 by the Surrogate's Court, Erie County.

This matter was concluded by this Court on January 21st, 1975. The record indicates Samantha was born in New York City on July 27th, 1967; that her mother, Faith Gabbey, died in November, 1973 in the City of Buffalo; that Samantha resided with her mother prior to her mother's death, in the City of Buffalo; and that Samantha has resided with her maternal grandparents, Dr. and Mrs. Arnold R. Gabbey, since her mother's death, in the City of Buffalo.

Is the container half empty or half full? Depending on your point of view, it can be either or both.



The thrust of the above captioned custody proceedings is unusual, since it involves a black father, white grandparents, an out-of-wedlock child.

The paternity of the child is admitted by the Petitioner, and, with ample proof to back up the admission, the fact of paternity is hereby established.

The father sees the child as black, and feels he is best able to care for the child in the community in which he lives, in New York City. The grandparents, on the other hand, being white, feel they can best provide for the child in the surroundings to which she has been accustomed.

Half white, half black.....the origin of the parents matters little. The child, and what is best for her, now and in the future, was the only matter considered.

If the mother of the child was living, this proceeding would not have been brought; the child would have remained with the mother, probably seeing her grandparents almost daily, as the record will show was the case before the mother's death.

The Petitioner has held many employment situations in the past ten years, explaining to the Court his reasons for the various changes. The child's grandfather has a very stable dental practice, with Grandma assisting on a part-time basis; their marriage having existed for more than thirty-five years. On the other hand, the Petitioner's marital experience leaves much to be desired. At the time of the hearing he was again living with his wife, after past separations.

The child Samantha actually has resided in Buffalo for most of her seven years. She knows no other way of life than that which she has been living. She knows no other people than those surrounding her in the growing-up process here in Buffalo in a predominantly white oriented section, in which she is ac-

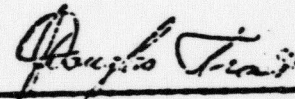


The Court finds that to suddenly change all of this for Samantha, at this time of her life, would not be in her best interest. She should remain in the custody of the grandparents until such time as she is able to decide for herself which direction she wishes to go, with no visitation by the father at this time.

The questions referred by the Supreme Court are answered:

- (1) the Petitioner is the father of the child;
- (2) the custody of the child is given to the grandparents; and
- (3) the question of guardianship (Surrogate's proceeding) is moot.

Submit order in accordance with this decision.

  
\_\_\_\_\_  
Family Court Judge

NICHOLAS A. ROMAS, M.D., P.C.  
COLUMBIA-PRESBYTERIAN MEDICAL CENTER  
161 FORT WASHINGTON AVENUE  
NEW YORK, N. Y. 10032  
—  
TELEPHONE (212) 578-5383

December 19, 1975

To Whom It May Concern:

Mr. Benjamin Raysor has been under my care since March 29, 1975 for urethral stricture, benign prostatic hypertrophy, and chronic prostatitis.

If you should have any questions regarding this matter please feel free to call me at any time.

Sincerely yours,

*Nicholas A. Romas, M.D.*

Nicholas A. Romas, M.D.  
Assistant Professor of  
Clinical Urology

NAR:MW





STATE OF NEW YORK  
TEMPORARY STATE COMMISSION  
ON JUDICIAL CONDUCT  
801 SECOND AVENUE  
NEW YORK, N. Y. 10017  
(212) 689-6782

GERALD STERN  
ADMINISTRATOR

MEMBERS

WILLIAM F. FITZPATRICK, CHAIRMAN  
HOWARD COUGHLIN  
HON. JAMES D. HOPKINS  
MICHAEL M. KIRSCH  
HON. WILLIAM B. LAWLESS  
WILLIAM V. MAGGIPIRTO  
HON. ANN T. NIKOLL  
MRS. GENE ROSS  
CARROLL L. WAINWRIGHT, JR.

June 10, 1975

Dear Mr. Raysor:

This is to acknowledge receipt of your letter dated June 2, 1975.

Your letter and the attached transcript raise questions which should be explored by the Commission. The Commission has no authority to act as a court and, thus, could not provide you with any relief with respect to the matter before Judge Trost. But the Judge's conduct will be reviewed.

We will be in touch with you shortly.

Very truly yours,

*Gerald Stern*  
Gerald Stern

GS:mc

Mr. Benjamin I. Raysor, Jr.  
2200 Madison Avenue  
Apartment 11-C  
New York, N.Y. 10037



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WILLIAM V. MAGGIPINTO  
HON. ANN T. MOKOLL  
MRS. GENE ROBB  
CARROLL L. WAINWRIGHT, JR.

July 7, 1975

Dear Mr. Raysor:

The Temporary State Commission On Judicial Conduct is conducting an investigation of the matters contained in your letter of June 2, 1975 and has asked that a member of the staff interview you.

Please provide the Commission with a telephone number at which you may be contacted during the day in order to arrange for such an interview.

You may call or write the Commission at the above location.

Very truly yours,

*William H. Wallace III*  
William H. Wallace III

WHW:mc

Mr. Benjamin F. Raysor, Jr.  
2200 Madison Avenue  
Apt. 11-C  
New York, N.Y. 10037

*Roger Schwarz*



# AMERICAN CIVIL LIBERTIES UNION

22 East 40th Street New York, N.Y. 10016 (212) 725-1222

June 11, 1975

Mr. Benjamin Raysor  
2200 Madison Ave., Apt. 11C  
New York, N. Y. 10037

Dear Mr. Raysor:

I have tried to reach you at your 283-6076 number, but without success. Could you give me a call.

Sincerely yours,



Bella Greene

## Appendix (17u)

Edward J. Ennis, Chairman, Board of Directors • Ramsey Clark, Chairman, National Advisory Council  
Aryeh Neier, Executive Director • Norman Dorsen, Osmond K. Fraenkel, Ruth Bader Ginsburg, Marvin M.  
Karparkin, General Counsel Legal Department: Melvin L. Wulf, Legal Director; Burt Neuborne, Assistant  
Legal Director • Staff Counsel: Joel M. Gora • Marilyn G. Halt • John H. F. Shattuck • Brenda Feigen  
Fasteau • Rena K. Uviller • Leon Friedman.

The

# STUDIO MUSEUM

IN HARLEM

2033 Fifth Avenue N.Y. 10035 (212) 427-5959

## MEMO

TO: Benjamin Raysor

FROM: Ronald McGarrah *RM*

RE: Termination of Employment

DATE: July 31, 1975

On July 9, 1975, the Finance Committee met to discuss inter alia, the need to conserve funds due to the crisis presented by the City's current fiscal problems and the uncertain funding level which will be provided by the State. The Finance Committee suggested that the Personnel Committee look at the existing structure of the administrative staff to ascertain whether such staff could be reduced without impairing the smooth functioning of the Museum.

The Personnel Committee members discussed the administrative staff with a view to eliminating duplicative or unnecessary positions. It is the recommendation of the Personnel Committee that the positions of Administrative Assistant and Bookkeeper be discontinued until further evaluation of our funding and administrative needs can be made.

I must concur in this recommendation that your position will be discontinued as of July 31, 1975. The four-day vacation time that I indicated was due you has been temporarily delayed by the Treasurer, Raymond Hulen, pending his discussion with the Personnel Committee.

I would personally like to wish you success in your next endeavor and hope that you will remain a functional part of the Studio Museum.

cc: Personnel Committee  
Executive Committee

*M. R. Z. ANETTO*



The

**STUDIO MUSEUM**

IN HARLEM

2033 Fifth Avenue N.Y. 10035 (212) 427-5959

September 29, 1975

Mr. Benjamin F. Raysor, Jr.  
2200 Madison Avenue #11C  
New York, New York 10037

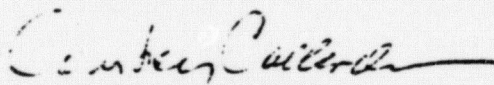
Dear Mr. Raysor,

I received your letter dated September 25, 1975 concerning the 4½ days vacation pay that you claim the Studio Museum still owes you.

All existing records and all statements made to me by Ron McGarrah, the Administrator and the Board of Directors indicate that you are not owed the 4½ days pay. Since your term of employment was completed some weeks before I began as Director, I have to rely entirely on their information and recommendation.

I hope this response reaches you by October 3, as you requested. I am sorry it is not more to your liking.

Sincerely,

  
Courtney Callender  
Executive Director

cc: R. McGarrah  
R. Clarke  
R. Hulan

Appendix (17w)

**Small Claims Part**  
**Civil Court of the City of New York**  
**County of**

S.C. # M 11302 1975

Re: Claimant Benjamin Rayson Jr.

Defendant Studio Museum In Harlem

To The Claimant:

Judgment was entered in your favor after inquest for the sum of \$ 175<sup>57</sup>, which includes interest and disbursements.

*Elmer J. Goldstein*  
 Arbitrator ~~Small Claims Part~~

If the judgment is not paid within 10 days, fees paid by you to the sheriff in an attempt to collect the judgment will also be added to the judgment.

You should first contact the party you sued or party's attorney (if party was represented by attorney) and request payment.

If they fail within ten days to pay then contact by phone or in person the Sheriff's office in the County where the party who owes you money, may have property. If you do not know where he has property, then you must contact the Sheriff's Office in the County where he resides.

*Sheriff's Offices*

<i>County</i>	<i>Address</i>	<i>Telephone #</i>
Bronx	851 Grand Concourse, Bronx, N.Y. 10451	293-3900
Kings	Municipal Bldg., Brooklyn, N.Y. 11201	643-2076
New York	31 Chambers St., New York, N.Y. 10007	566-3738 - 374-2223
Queens	County Court House, L.I. City, N.Y. 11101	392-4950
Richmond	County Court House, Staten Island, N.Y. 10301	447-0041

Give the Sheriff's office the following:

S.C. # of your case which appears above, including year, and the County where case was tried.

Your name, address and telephone # (if you have one).

The name and address of the defendant.

Your knowledge, if any, of nature and location of any property belonging to defendant.

Your judgment is good and valid for a period of 20 years.

If you do not collect it at first, you may make further efforts to collect at later dates.





VETERANS ADMINISTRATION  
HOSPITAL  
FIRST AVENUE AT EAST 24TH STREET  
NEW YORK, NEW YORK 10010

December 19, 1975

U.S. District Court  
New York,  
New York

IN REPLY  
REFER TO:  
630(136D1)  
SS# 144 12 7669  
RAYSOR, Benjamin

Gentlemen:

Mr. Raysor has asked us to inform you that he was first examined here August 25 and subsequently admitted to this hospital September 9, 1975. He was discharged September 18, 1975.

DIAGNOSIS: Benign prostatic hypertrophy

OPERATION: Cystoscopy - 9/12/75

Mr. Raysor was seen in the clinic on the following dates: October 14, November 6 and November 7, 1975.

The medical information furnished is privileged and not to be divulged to unauthorized persons.

Sincerely yours,

*P.A. Pascarelli*  
P.A. PASCARELLI  
Chief, Medical Administration Service

Appendix (17y)

Show veteran's full name, VA file number, and social security number on all correspondence.



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GERALD STERN  
ADMINISTRATOR

MEMBERS

~~XXXXXXXXXXXXXXXXXXXX~~  
HOWARD COUGHLIN  
HON. JAMES D. HOPKINS  
MICHAEL M. KIRSCH  
~~XXXXXXXXXXXXXXXXXXXX~~  
WILLIAM V. MAGGIPINTO  
HON. ANN T. MIKOLL  
MRS. GENE ROSS  
CARROLL L. WAINWRIGHT, JR.

September 30, 1975

Dear Mr. Raysor:

This is to acknowledge receipt of your letter of September 19, 1975 addressed to Mr. Roger Schwarz.

Frankly, we have no further progress to report to you with respect to your complaint. Your letter suggests that there might be a misunderstanding about what you can expect from the Commission.

I would like very much to discuss with you our jurisdiction, our limitations and the nature of our inquiries. If you feel that this would be productive, kindly call my office and arrange a mutually convenient time for a meeting with me.

Very truly yours,

*Gerald Stern*  
Gerald Stern

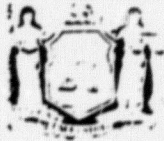
GS:bh

Mr. Benjamin F. Raysor, Jr.  
2200 Madison Avenue, Apt. 11-C  
New York, New York 10037

*tues — 10/7/75 11:00 A.M.  
Meeting with Gerald Stern*



*State of New York,  
Court of Appeals,*



*Charles T. Breitel  
Chief Judge*

*714 Trinity Place  
New York, New York 10006*

November 6, 1975

Mr. Benjamin F. Raysor, Jr.  
2200 Madison Avenue, Apt. 11C  
New York, New York 10037

Dear Mr. Raysor:

I have your letter of October 30th in the matter of your child.

I would like to know whether you have taken an appeal from Judge Trost's decision, and its present status. If no appeal has been taken, I would like to know the reason why you chose not to proceed through the litigation process.

Very truly yours,

A handwritten signature in cursive script, reading "Charles T. Breitel".

Copy received:

Fennell, Fritz, Caemmerer & Co. Inc.  
P.C.

April 1, 1977

at 4:35 PM

E. A. Holtz